

**RESERVE BANK OF INDIA
FOREIGN EXCHANGE DEPARTMENT
Central Office
Mumbai 400 001**

RBI/2004/34
A.P.(DIR Series) Circular No.60

January 31, 2004

To
All Authorised Dealers in Foreign Exchange

Madam / Sirs,

External Commercial Borrowings (ECB)

1. Preamble

With a view to replace temporary measures relating to External Commercial Borrowings (ECB) announced on November 14, 2003 with more transparent and simplified policies and procedures, a review of the ECB guidelines has been undertaken. This review is based on the current macro-economic situation, challenges faced in external sector management and the experience gained so far in administering ECB policy.

ECB are a key component of India's overall external debt which includes, *inter alia*, external assistance, buyers' credit, suppliers' credit, NRI deposits, short-term credit and Rupee debt. ECB guidelines, therefore, need to be assessed in the backdrop of various external debt sustainability indicators relevant to emerging economies in order to explore the head-room available for more external debt. An analysis of various indicators of external debt (e.g. short-term debt, debt to GDP ratio, debt servicing ratio, vis-à-vis the proportion of debt to non-debt capital flows) indicates that there is some head-room for increase in the magnitude of debt especially for real investment activity. As a part of overall management of the external sector, there is a case for putting in place a liberalised ECB policy provided there is no bunching of residual maturity of ECB in any particular year and the option of restricting the capital flows in future, if need be, is kept open.

ECB refer to commercial loans, [in the form of bank loans, buyers' credit, suppliers' credit, securitised instruments (e.g. floating rate notes and fixed rate bonds)] availed from non-resident lenders with minimum average maturity of 3 years. Until November 14, 2003, any legal entity such as a corporate /financial intermediary was an eligible borrower. In view of its implication for potential systemic risks, ECB availed by financial intermediaries need to be distinguished from those availed by corporates. Furthermore, banks have the facility (i) to borrow from its head office or branch or correspondents outside India up to 25 per cent of its unimpaired Tier-I Capital or US\$ 10 million, whichever is higher, (ii) to borrow from its head office or branch or correspondents outside India without limit for the purpose of replenishing Rupee resources (not for investment in call money or other markets) and (iii) to avail lines of credit from a bank / financial institution outside India without any limit for the purpose of granting pre-shipment / post-shipment credit to its constituents.

2. Accordingly, the **revised ECB guidelines** are set out below. ECB can be accessed under two routes, viz., (i) Automatic Route outlined in paragraph 2(A) and (ii) Approval Route indicated in paragraph 2(B).

(A) AUTOMATIC ROUTE

ECB for investment in real sector -industrial sector, especially infrastructure sector-in India, will be under Automatic Route, i.e. will not require RBI/Government approval. In case of doubt as regards eligibility to access Automatic Route, applicants may take recourse to the Approval Route.

i) Eligible borrowers

Corporates registered under the Companies Act except financial intermediaries (such as banks, financial institutions (FIs), housing finance companies and NBFCs) are eligible.

ii) Recognised Lenders

Borrowers can raise ECB from internationally recognised sources such as (i) international banks, international capital markets, multilateral financial institutions (such as IFC, ADB, CDC etc.), (ii) export credit agencies and (iii) suppliers of equipment, foreign collaborators and foreign equity holders.

iii) Amount and Maturity

- a) ECB up to USD 20 million or equivalent with minimum average maturity of three years
- b) ECB above USD 20 million and up to USD 500 million or equivalent with minimum average maturity of five years
- c) ECB up to USD 20 million can have call/put option provided the minimum average maturity of 3 years is complied before exercising call/put option.

iv) All-in-cost ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. Moreover, the payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost.

The all-in-cost ceilings for ECB will be indicated from time to time. The following ceilings will have immediate effect and will be valid till reviewed.

| Minimum Average Maturity Period | All-in-cost Ceilings over six month LIBOR* |
|--|---|
| Three years and up to five years | 200 basis points |
| More than five years | 350 basis points |

* for the respective currency of borrowing or applicable benchmark.

v) End-use

- a) ECB can be raised only for investment (such as import of capital goods, new projects, modernization/expansion of existing production units) in real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector - in India. Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) ports, (vi) industrial parks and (vii) urban infrastructure (water supply, sanitation and sewage projects);
- b) Utilisation of ECB proceeds is permitted in the first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.
- c) Utilisation of ECB proceeds is not permitted for on-lending or investment in capital market by corporates
- d) Utilisation of ECB proceeds is not permitted in real estate. The term 'real estate' excludes development of integrated township as defined by Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, SIA (FC Division), Press Note 3 (2002 Series, dated 04.01.2002).

vi) Guarantees

Guarantee/standby letter of credit or letter of comfort by banks, financial institutions and NBFCs relating to ECB is not permitted.

vii) Security

The choice of security to be provided to the lender/supplier is left to the borrower. However, creation of charge over immovable assets and financial securities, such as shares, in favour of overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000, dated May 3, 2000, respectively.

viii) Parking of ECB proceeds overseas

ECB proceeds should be parked overseas until actual requirement in India.

ix) Prepayment

Prepayment of ECB up to USD 100 million is permitted without prior approval of RBI, subject to compliance with the stipulated minimum average maturity period as applicable for the loan.

x) Refinance of existing ECB

Refinancing of existing ECB by raising fresh loans at lower cost is permitted subject to the condition that the outstanding maturity of the original loan is maintained.

xi) Debt Servicing

The designated Authorised Dealer (AD) has the general permission to make remittances of instalments of principal, interest and other charges in conformity with ECB guidelines issued by Government / RBI from time to time.

xii) Procedure

Borrower may enter into loan agreement with recognised overseas lender for raising ECB under Automatic Route without prior approval of RBI. The borrower may note to comply with the reporting arrangement under paragraph 2(C)(i). The primary responsibility to ensure that ECB raised / utilised are in conformity with the ECB guidelines and the Reserve Bank regulations/directions/circulars is that of the concerned borrower.

(B) APPROVAL ROUTE

The following types of proposals for ECB will be covered under the Approval Route.

i) Eligible borrowers

- a) Financial institutions dealing exclusively with infrastructure or export finance such as IDFC, ILFS, Power Finance Corporation, Power Trading Corporation, IRCON and EXIM Bank will be considered on a case by case basis.
- b) Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government will also be permitted to the extent of their investment in the package and assessment by RBI based on prudential norms. Any ECB availed for this purpose so far will be deducted from their entitlement.
- c) Cases falling outside the purview of the automatic route limits and maturity period indicated at paragraph 2 (A)(iii) (a) and 2 (A)(iii) (b).

ii) Recognised Lenders

Borrowers can raise ECB from internationally recognised sources such as (i) international banks, international capital markets, multilateral financial institutions (such as IFC, ADB, CDC etc.), (ii) export credit agencies and (iii) suppliers of equipment, foreign collaborators and foreign equity holders.

iii) All-in-cost ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. Moreover, the payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost.

The all-in-cost ceilings for ECB will be indicated from time to time. The following ceilings will have immediate effect and will be valid till reviewed.

| Minimum Average Maturity Period | All-in-cost Ceilings over six month LIBOR* |
|--|---|
| Three years and up to five years | 200 basis points |
| More than five years | 350 basis points |

* for the respective currency of borrowing or applicable benchmark.

iv) End-use

- a) ECB can be raised only for investment (such as import of capital goods, new projects, modernization/expansion of existing production units) in real sector-industrial sector including small and medium enterprises (SME) and infrastructure sector-in India. Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) ports, (vi) industrial parks and (vii) urban infrastructure (water supply, sanitation and sewage projects);
- b) Utilisation of ECB proceeds is permitted in the first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.
- c) Utilisation of ECB proceeds is not permitted for on-lending or investment in capital market by corporates except for banks and financial institutions eligible under paragraph 2(B)(i)(a) and 2(B)(i)(b);
- d) Utilisation of ECB proceeds is not permitted in real estate. The term 'real estate' excludes development of integrated township as defined by Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, SIA (FC Division), Press Note 3 (2002 Series, dated 04.01.2002).

v) Guarantees

Guarantee/standby letter of credit or letter of comfort by banks, financial institutions and NBFCs relating to ECB is not normally permitted. Applications for providing guarantee/standby letter of credit or letter of comfort by banks, financial institutions relating to ECB in the case of SME will be considered on merit subject to prudential norms.

vi) Security

The choice of security to be provided to the lender/supplier is left to the borrower. However, creation of charge over immovable assets

and financial securities, such as shares, in favour of overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000, dated May 3, 2000, respectively.

vii) Parking of ECB proceeds overseas

ECB proceeds should be parked overseas until actual requirement in India.

viii) Prepayment

Prepayment of ECB up to USD 100 million is permitted without prior approval of RBI, subject to compliance with the stipulated minimum average maturity period as applicable for the loan.

ix) Refinance of existing ECB

Refinancing of outstanding ECB by raising fresh loans at lower cost is permitted subject to the condition that the outstanding maturity of the original loan is maintained.

x) Debt Servicing

The designated AD has the general permission to make remittances of instalments of principal, interest and other charges in conformity with ECB guidelines issued by Government / RBI from time to time.

xi) Procedure

Applicants are required to submit an application in form ECB (format in Annex I) through designated AD to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, External Commercial Borrowings Division, Mumbai – 400 001 along with necessary documents.

xii) Empowered Committee

RBI will set up an Empowered Committee to consider proposals coming under the approval route.

(C) REPORTING ARRANGEMENTS AND DISSEMINATION OF INFORMATION

i) Reporting Arrangements

a) With a view to simplify the procedure, submission of copy of loan agreement is dispensed with.

b) Borrowers are required to submit Form 83 (format in Annex II), in duplicate, certified by the Company Secretary (CS) or Chartered Accountant (CA) to the designated AD. One copy is to be forwarded

by the designated AD to the Director, Balance of Payments Statistics Division, Department of Statistical Analysis and Computer Services (DESACS), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051 for allotment of loan registration number.

- c) The borrower can draw-down the loan only after obtaining the loan registration number from DESACS, RBI.
- d) Borrowers are required to submit ECB-2 Return (format in Annex III) on monthly basis certified by the designated AD so as to reach DESACS, RBI within seven working days from the close of month to which it relates.

ii) Dissemination of Information

For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB will be put on the RBI website by the next working day of the approval under Approval Route and on a monthly basis with a lag of one month to which it relates under Automatic Route.

3. Foreign Currency Convertible Bonds (FCCB)

The liberalisation made for ECB is also extended to FCCB in all respects.

4. Necessary amendments to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 dated May 3, 2000 and the Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2000 dated May 3, 2000 are being issued separately.

5. The above amendments to ECB Policy will come into force with effect from February 1, 2004. These instructions superseding earlier instructions on ECB issued by RBI would be reviewed from time to time.

6. Authorised Dealers may bring the contents of this Circular to the notice of their constituents concerned.

7. The directions contained in this circular have been issued under Section 10 (4) and Section 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999).

Yours faithfully,

F. R. Joseph

Chief General Manager