Client Alert

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Liberalised ECB Access for Infrastructure Companies in India

In a welcome move, the Reserve Bank of India (RBI) has liberalised the External Commercial Borrowings (ECB) framework in its application to companies in the infrastructure sector (InfraCos). After the introduction of the new ECB framework in November last year (reiterated in January 2016 through the Master Directions), InfraCos could not borrow ECBs in foreign currency unless the minimum average maturity was at least 10 years. This proved difficult for banks given capital allocation requirements. Furthermore lenders with the ability to lend for longer periods at sufficient levels (such as pension funds and sovereign wealth funds) were unable to make up for the shortfall in the short term.

The key takeways of the revised ECB framework which were issued by the RBI on 30 March 2016 are as follows:

- InfraCos, Non-Banking Financial Companies-Infrastructure Finance Companies (NBFC-IFCs), NBFCs-Asset Finance Companies (NBFC-AFCs), Holding Companies (HoldCos) and Core Investment Companies (CICs) can now access ECBs under Track I subject to the conditions that:
    - the ECB should be for a minimum average maturity period of 5 years;
    - the ECB is subject to "100% hedging" (to be verified and reported by an authorised dealer); and
    - the board of directors of the borrower have approved a risk management policy.
- We note that no exception has been made to the 100% hedging requirement for naturally hedged companies with foreign currency revenues.
- The revised framework does not explain whether the 100% hedging requirement applies to all outstanding principal amounts only or whether interest and other costs should also be hedged. Undoubtedly, this will be clarified in time.
- Companies in the exploration, mining and refinery sectors are now deemed to be InfraCos.
- While InfraCos can use such ECB proceeds for end uses allowed under Track I, NBFC-IFCs and NBFC-AFCs must only use the proceeds for infrastructure financing. HoldCos and CICs can only use the ECBs to on-lend to infrastructure SPVs.

- The individual borrowing limits will be USD 750 million.

- The RBI has also confirmed market practice by clarifying that Non-convertible Debentures made by Registered Foreign Portfolio Investors do not come under the purview of the ECB Guidelines.

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