Client Alert

May 2018

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Reserve Bank of India modifies External Commercial Borrowings Policy

The Reserve Bank of India has on 27 April 2018 released a circular modifying the regulatory regime for external commercial borrowings ("ECBs") (the "ECB Framework") to allow Indian companies easier access to offshore debts.

Key Takeaways

The key takeaways of the recent changes announced by the RBI are as follows:

- *All-in cost ceiling*: The all-in cost ceiling for borrowings under Track I and Track II has been standardised to a uniform cost of 450 basis points over the six month United States Dollar ("**USD**") LIBOR (or applicable benchmark for the respective currency). Earlier, for Track I ECBs, the all-in cost ceiling was pegged at six month LIBOR + 300 basis points and at six month LIBOR + 450 basis points depending on the tenor while the all-in cost ceiling for Track II ECBs was LIBOR + 500 basis points.

  In respect of Track III ECBs, the all-in cost ceiling has been capped at 450 basis points over the prevailing yield of the Government of India securities of corresponding maturity.

- *End-Uses*: The positive end-use list prescribed for Track I ECBs has been replaced with a negative end-use list. All tracks have limited prohibited end-uses.

  The common negative end-use list for all tracks include real estate activities, investment in capital markets and domestic equity investment. For Tracks I and III, unless the funding source is foreign equity holders where the average maturity of such an ECB is at least five years, the negative end-use list includes working capital purposes, general corporate purposes and repayment of Rupee loans. On lending for any of the negative end-uses under any of the Tracks is not permitted.

- *Eligible borrowers*: The list of eligible borrowers has been expanded to include housing finance companies and port trusts, which are permitted to borrow under all Tracks - however, any Track I borrowing needs to be fully hedged. Companies engaged in the business of maintenance, repair and overhaul, and freight forwarding are now eligible to borrow ECBs denominated in Indian Rupees.

- *ECB Liability to Equity Ratio*: The ECB Liability to Equity Ratio for ECBs from direct equity holders under the automatic route, has now been raised from 4:1 to 7:1. This means that eligible borrowers may borrow up to seven time the amount of equity contributed by a direct foreign equity holder. This ratio is not applicable if the total of all ECBs raised by an entity is up to USD 5 million or equivalent.

The main provisions of the ECB Framework following these changes are summarised in the Annexure for easy reference.

Key Provisions of the External Commercial Borrowings Framework following changes announced by the Reserve bank of India on 27 April 2018

	Track I	Track II	Track III
Average maturity	3-10 years	10+ years	3+ years
Currency of denomination and size of loan	Foreign currency denominated External Commercial Borrowings ("**ECBs**") of any amount	Foreign currency denominated ECBs of any amount	Indian Rupee denominated ECBs of any amount
All-in-cost ceilings	Six month LIBOR + 450 basis points		450 basis points over the prevailing yield of the Government of India securities of corresponding maturity
Eligible borrowers	Companies in the manufacturing, software development, shipping and airlines sectors, units in special economic zones ("**SEZ**s"), SIDBI, the Indian EXIM Bank, housing finance companies and port trusts.	Entities under Track I, infrastructure companies (see the "harmonised list"), holding companies, core investment companies, real estate investment trusts and infrastructure investment trusts	Entities under Track II, NBFCs, specified entities engaged in providing micro-finance, companies providing miscellaneous services, developers of SEZs, companies engaged in the business of maintenance, repair and overhaul, and freight forwarding
Permitted end-uses	Any purpose other than: • investments in capital markets, equity investments in India, real estate or purchase of land • working capital purposes, general corporate purposes and repayment of Rupee loans except ECBs from foreign equity holders, provided the average maturity period is more than 5 years, provided that if the ECBs are from a direct equity holder and has a minimum average maturity of at least five years, these purposes are permitted • on-lending for any of the activities stated above	Any purpose other than: • investments in capital markets, equity investments in India, real estate or purchase of land • on-lending for any of the activities stated above or for working capital purposes, general corporate purposes, repayment of Rupee loans	Same as Track I.
Individual limits	• Up to United States Dollar ("**USD**") 750 million or equivalent for infrastructure and manufacturing companies • Up to USD 200 million or equivalent for companies in software development • Up to USD 100 million or equivalent for entities engaged in micro-finance activities • Up to USD 500 million or equivalent for remaining entities		
ECB Liability to Equity Ratio	ECBs from direct equity holders will be subject to an ECB Liability: Equity Ratio of 7:1. This ratio will not apply if the total amount of ECBs raised by an entity is up to USD 5 million or equivalent.		