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Foreign Exchange Management (Borrowing and Lending) (Fourth Amendment) Regulations, 2025

As a step towards boosting and enhancing access to external commercial borrowings (“ECB”) by Indian entities, the Reserve Bank of India (“RBI”) has released for consultation the draft Foreign Exchange Management (Borrowing and Lending) (Fourth Amendment) Regulations, 2025 (“**Draft Regulations**”) as a proposed amendment to the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, proposing a liberalized ECB regime focused towards shifting to more market-determined pricing and linking limits to financial strength of the borrower and redefining permitted end-uses. Public comments on the Draft Regulations are invited until October 24, 2025 via RBI’s ‘Connect to Regulate’ portal or by e-mail.

This monumental amendment to the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 notified by RBI represents a paradigm shift in India’s financing landscape.

This will significantly impact in shaping up the stage for acquisition financing in India and facilitates easier access to global capital for Indian borrowers. Some of the key changes proposed to be introduced under the Draft Regulations include:

- Enhanced list of permitted end-uses
- Increased borrowing limits
- Uniform minimum average maturity period (MAMP)
- Uncapped cost of borrowing / all-in cost
- Broadened scope of eligible borrowers and lenders

Set out below is a summary of some of the key changes listed above:

Enhanced List of Permitted End – Uses

The end-use restrictions are proposed to be liberalized and eligible borrowers under the Draft Regulations may now avail ECB for:

- Acquisition Financing: The eligible borrowers may avail ECBs for:
 - mergers or acquisitions in terms of the Companies Act, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations and IBC;
 - overseas investments made in terms of FEMA (Overseas Investment) Regulations; and
 - investment in primary market instruments issued by non-financial entities for on-lending (as prescribed below).

This will enable a wide range of Indian corporates to raise ECB for funding their acquisition transactions. While the proposed changes ought to permit acquisition financing for transactions in respect of both listed and unlisted securities, the Draft Regulations are drafted in a manner that only provide for mergers and acquisitions which are in compliance with all three statutes (i.e. Companies Act, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations and IBC). This renders ambiguity on the permissibility of transactions involving unlisted securities. It therefore remains to be seen as to whether RBI will clarify this in the final notified amendment regulations.

Given the existing restriction on foreign portfolio investment in unlisted non-convertible securities being used for capital market and acquisition transactions combined with the high cost and regulatory compliance associated with raising funds through listed non-convertible debentures, ECBs may now offer a cost-effective access to debt for investments in securities and acquisition financing transactions with streamlined regulatory compliance requirements.

Notably, the proposed changes coupled with the announcements made by RBI on plans to provide an enabling framework for Indian banks to finance acquisitions by Indian corporates will result in changing the landscape of acquisition financing in India

- Real Estate Transactions: The Draft Regulations have also streamlined end-uses in respect of real estate transactions where ECBs can be utilized for real estate business to the extent that the intended end-uses are activities or sectors permitted for foreign direct investment (“**FDI**”) or for the purchase or long-term leasing of industrial land of new projects or for modernization or expansion of existing end-uses. This proposal makes a shift from the existing restriction on ‘real estate activities’ where the only exceptions were *inter alia*, the construction or development of industrial parks, integrated townships, special economic zones, purchase or long term leasing of industrial land as part of new project or modernisation or expansion of existing units and any activity under ‘infrastructure sector’.



This will also mark a fundamental shift in the regime for real estate financing in India as this is one sector which is always in need for capital and a cost-effective ECB framework will certainly help the sector.

- **On-lending Transactions:** The Draft Regulations propose that eligible borrowers may now avail ECB for on-lending where:
 - the eligible borrower's lending business is regulated by the RBI; and
 - Indian companies or body corporates established under a Central Act or State Act for the purpose of lending to its group entities.

Notably, this flexibility for an eligible borrower to on-lend proceeds of the ECB to its group entities may also pave the way for structures where the holding companies may raise debt via ECB for funding any acquisitions or corporate restructuring transactions by their group entities.

It is also important to note that as entities registered with SEBI, both REITs and INVITs are intended to be specifically covered under the proposed definition of 'eligible borrowers' under the Draft Regulations. However, it remains unclear whether REITs and INVITs will be able to use proceeds from an ECB for on-lending as it is not expressly covered under the permitted end uses.

Increased Borrowing Limits

The Draft Regulations propose to tie overall borrowing limits to the financial strength of an eligible borrower. An eligible borrower may avail ECB such that its aggregate ECB outstanding does not exceed the higher of:

- USD 1 billion, or
- its total outstanding borrowing (external and domestic) does not exceed 300 per cent. of its net worth as per the last audited balance sheet.

Notably, these borrowing limits will not be applicable to eligible borrowers who are regulated by financial sector regulators (including the RBI, SEBI, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority), implying the non-banking financial companies and registered core investment companies (among other financial sector regulated entities) may avail ECBs without any borrowing limit, except to the extent that there is such a limit prescribed by the relevant regulator.

This is a significant increase in headroom in comparison to the present limits which permit ECB up to (i) 750 million or its equivalent in case of borrowing from foreign lenders (other than direct foreign equity holders) in a financial year; and (ii) an ECB to equity ratio of 7:1 in case of direct foreign equity holders. This increased headroom will be instrumental in enabling high net worth entities to avail ECB in a manner commensurate with their net worth.

Uniform MAMP and Uncapped Cost of Borrowing

One of the most significant and welcome proposal under the Draft Regulations is to move to a simplified and uniform minimum average maturity period ("**MAMP**") of 3 (three) years for all ECBs, except in the case of eligible borrowers engaged in manufacturing sector who may avail ECBs having MAMP between 1 (one) year and 3 (three) years, subject to the condition that the outstanding stock of such ECBs do not exceed USD 50 million. It has also been clarified that these restrictions will not be applicable upon conversion of ECB into non-debt instruments, repayment of ECB using proceeds of non-debt instruments (on repatriation basis provided proceeds being received after drawdown of ECB), waiver of debt by the lender or a closure, merger, acquisition, resolution or liquidation of either the borrower or the lender. However, the existing restrictions on exercise of call or put options on ECBs prior to the expiry of MAMP continues to be applicable under the Draft Regulations.

Further, the current caps on all-in costs (i.e., benchmark rate + a spread of up to 550 basis points in case of freely convertible foreign currency denominated ("**FCY**") ECBs and benchmark rate + a spread of up to 450 basis points in the case of Indian Rupees ("**INR**") denominated ECBs) and penal interest for default or breach of covenants for ECBs are proposed to be discontinued and the cost of borrowing and penal charges are proposed to be linked to prevailing market conditions (subject to the satisfaction of the authorized dealer bank). There is no guidance available on how the prevailing market conditions are determined and remains a factor to explore on how it evolves basis commercial considerations.

Standardising MAMP to 3 (three) years will also make ECBs a realistic and commercially viable option for eligible borrowers considering working capital / general corporate purpose loans or for refinancing existing loans from domestic lenders. Further, the alignment of borrowing costs to market rates will open up the ECB route for more structured debt solutions and ECBs may now become a viable option for stressed and special situation funding transactions and for eligible borrowers under IBC.

Broadened Scope of Eligible Borrowers and Lenders

The Draft Regulations propose to expand the pool of eligible lenders and borrowers which may result in a larger number of Indian entities being able to consider ECB as a source of funding from any entity outside India.

Eligible Lenders: The scope of eligible lenders is proposed to include:

- any person resident outside India; or
- a branch outside India or in the International Financial Services Centre (IFSC) of an entity whose lending business is regulated by the RBI,

Under the extant framework, eligible lenders could be: (i) residents of a Financial Action Task Force or International Organization of Securities Commissions compliant countries or (ii) multilateral and regional financial institutions where India is a member

country. Further, foreign branches or subsidiaries of Indian banks are currently permitted to extend only FCY denominated ECBs. It also becomes relevant to note that as restrictions under the extant framework applicable for foreign direct equity holders are proposed to be discontinued, it opens up access for offshore promoters, sponsors or individuals to provide funding via the ECB route even if they hold less than 25% equity in the relevant eligible borrower.

Eligible Borrowers: The scope of eligible borrower is proposed to be expanded to all Indian entities incorporated, established or registered under an Act of Parliament or state legislature, subject to the condition that such entities are permitted to borrow in terms of the applicable laws. This is a significant expansion in comparison to the existing pool of eligible borrowers which is limited to entities permitted to receive FDI, with a few exceptions. With this change, it also becomes clear that REITs and INVITs will also form part of the pool of eligible borrowers.

Other Significant Changes

Currency: Under the extant ECB framework, while the currency of ECB may be changed from one FCY to another FCY or from an FCY to INR, conversion of ECB from INR to FCY is not permitted. The Draft Regulations propose to withdraw this restriction and allow conversion of ECB in INR to any FCY at the exchange rate prevailing on the date of the agreement for such change or at an exchange rate which results in a liability lower than that arrived at by using

the exchange rate prevailing on the date of the agreement.

Reporting: While the Draft Regulations reinforce the existing reporting requirements, timelines for periodic Form ECB – 2 reporting and submission of revised Form ECB are proposed to be extended to 30 days (as opposed to the existing timeline of 7 days) from the relevant dates triggering such reporting requirements.

Key Takeaway and Implications

The Draft Regulations significantly diverge from the 'one size fits all' approach, permitting Indian entities to avail ECB in a manner suiting their commercial requirements and financial resilience while ensuring exit flexibility for foreign lenders without compromising protection of investors' interests. These proposals seek to further liberalize the ECB regime, making it more accessible and market-oriented, particularly for manufacturing, financial, and strong-net-worth entities and may considerably swell up debt opportunities for eligible borrowers. Compared to the extant framework, they reduce rigidity, potentially lowering costs and easing fundraising, as seen in recent ECB growth.

Please get in touch with the attorney at the Firm you regularly work with, or the following lawyers in case you have further questions or would like to discuss any aspect of the proposed amendments in greater detail.

Please feel free to address any further questions or request for advice to:



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