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Bhaumik Goda | Saumya Sheth
Chartered Accountants

REVISED ECB REGULATIONS

(I) Background

RBI has completely revamped existing regulations relating to External Commercial Borrowings, Trade credits & Borrowing and lending in INR ('ECB') by issuing a revised Notification No. 3(R)/2018-RB - Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 dated 17th December 2018 ('New ECB Regulations'). Further, RBI has also issued A.P. (DIR Series) Circular No. 17 dated 16th January 2019 ('Circular 17') providing for new ECB framework.

Earlier there were following three regulations governing borrowing/lending by person resident in India with persons resident outside India:

Sr. No.	Name of regulation	Relevant Notification No.	Scope of regulation

1	Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 ('Old ECB Regulations')	FEMA 3 /2000-RB dated 3rd May, 2000	i) Borrowing in foreign currency by persons other than AD ii) Borrowing in foreign currency by AD iii) Borrowing in Indian currency by Company iv) Trade credits
2	Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 ('INR Borrowing Regulations')	FEMA 4 /2000-RB dated 3rd May, 2000	i) Borrowing in Indian currency by Indian Company through issuance of NCDs; ii) Borrowing in Indian currency by persons other than company
3	Para 21 of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004 ('ODI Regulations')	FEMA 120/ RB-2004 dated 7th July, 2004	i) Lending in foreign currency by Indian company to its overseas subsidiary/ JV

RBI has now consolidated all above Regulations relating to borrowing and lending in foreign currency and Indian currency and issued Revised FEMA 3/2019 ('New ECB Regulations') dealing with foreign currency and Indian currency borrowing / lending by Indian residents. Further, certain aspects of ECB have also been clarified by RBI through issuing Circular 17. Earlier there four-tier structure of ECB which have now been rationalised as under:
i) Track I & Track II have been merged as Foreign Currency denominated ECB; and

ii) Track III & Rupee denominated bonds have been merged as Rupee denominated ECB.

Key aspects of new ECB framework are given below:

(II) New definitions

New ECB Regulations has inserted following new definitions for the purpose of clarity:

? External Commercial lending – It means lending by person resident in India to borrower outside India in accordance with policy decided by RBI

? Real estate activity - means any activity involving

• own or leased property for buying, selling and renting of commercial and residential properties or land

• activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling, letting or managing real estate.

However, this would not include

• development of integrated township; or

• purchase/long term leasing of industrial land as part of new project/modernisation or expansion of existing units or;

• any activity under 'infrastructure subsectors' as given in the Harmonised Master List of Infrastructure sub-sectors approved by the Government of India vide Notification F. No. 13/06/2009-INF, as amended/updated from time to time.

? Restricted End Use: It means end uses where borrowed funds cannot be deployed and shall include the following:

• In the business of chit fund or Nidhi Company;

• Investment in capital market including margin trading and derivatives;

• Agricultural or plantation activities;

• Real estate activity or construction of farm houses; and

• Trading in Transferrable Development Rights (TDR),

? **It has been specifically clarified that use of credit cards in India by person resident outside India and outside India by person resident in India shall not be subject to ECB regulations.**

? **Also, it has been clarified that any borrowing permitted under erstwhile regulations can be continued up to the due date of repayment.**

(III) Key changes in ECB Policy

Key changes between old ECB regulations relating to borrowings in INR/foreign currency by Indian resident entity from person resident outside India are highlighted below:

Eligible borrower

Old ECB Regulation read with Master Direction on ECB updated as on 22nd November, 2018	New ECB regulation read with Circular No. 17 dated 16 th Jan 2019	Comments
The list of entities eligible to raise ECB were classified under the three tracks is set out in the following table.	All entities eligible to receive FDI are eligible borrowers and there is no more Track 1, Track 2 and Track 3. Further, following entities are also eligible to raise ECB: a) Port Trusts; b) Units in SEZ; c) SIDBI; d) EXIM Bank; and e) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations (permitted only to raise INR ECB).	Under new ECB regulations, all entities, including companies and LLP would be eligible to receive FDI under FEMA 20 can raise ECB irrespective of the sector in which they operate. New regulations now paves way for service sector enterprise, companies engaged in ITES activities etc to raise finance via ECB route. Further ECB route is open even for sectors which are subject to

Track :1 i. Companies in mfg & software development sectors. ii. Shipping and airlines companies. iii. SIDBI. iv. Units in SEZs v. Exim Bank (only under the approval route). vi. Companies in infra sector, NBFC-IFCs, NBFC-AFCs, Holding Companies and CICs. Also, Housing Finance Companies, regulated by the National Housing Bank, Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908.	**Track :2** i. . All entities listed under Track I. ii. REITs & INVITs (governed by SEBI)	**Track :3** i. All entities listed under Track II. ii. NBFCs coming under the regulatory purview of RBI. iii. NBFCs-MFIs, Not for Profit companies registered under the Companies Act, 1956/2013, Societies, trusts and cooperatives (registered under the Societies Registration Act, 1860, Indian Trust Act, 1882 and State-level Cooperative Acts/Multi-level Cooperative Act/State-level mutually aided Cooperative Acts respectively), NGOs which are engaged in micro finance activities. iv. Companies engaged in miscellaneous services viz. R&D, training (other than educational institutes), companies supporting infrastructure, companies providing logistics services. Also, companies engaged in maintenance, repair and overhaul and freight forwarding. v. Developers of SEZs/ National Manufacturing and Investment Zones (NMIZs).		sectorial cap or FDI is permitted subject to performance linked conditions.

Borrowing by IBC Cos

Old ECB Regulation read with Master Direction on ECB updated as on 22nd November, 2018	**New ECB regulation read with Circular No. 17 dated 16 th Jan 2019**	**Comments**

No specific exemption / relaxation for companies in IBC	An entity which is under restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.	Likely to boast restructuring of companies under IBC. Resolution plan can now substitute high interest debt with low interest bearing ECB

Eligible lenders

The list of recognised lenders/investors for the three tracks will be as follows:	The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECBs. However, a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and c) Foreign branches/subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs). Foreign branches/subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/ underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.	Under the new ECB regulations, any person can be eligible lender provided they are resident of FATF or IOSCO compliant country. However, individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/ debentures listed abroad. Further, Financial institutions located in International Financial Services Centres in India are not specifically included in definition of recognised lender which were included in the old ECB regulations.

Track :1 i. International banks. ii. International capital markets. iii. Multilateral financial institutions (such as, IFC, ADB, etc.) /regional financial institutions and Government owned (either wholly or partially) financial institutions. iv. Export credit agencies. v. Suppliers of equipment. vi. Foreign equity holders. vii. Overseas long term investors such as: a. Prudentially regulated financial entities; b. Pension funds; c. Insurance companies; d. Sovereign Wealth Funds; e. Financial institutions located in International Financial Services Centres in India viii. Overseas branches/ subsidiaries of Indian banks	**Track :2** All entities listed under Track I (excluding overseas branches /subsidiaries of Indian banks)	**Track :3** All entities listed under Track I (excluding overseas branches/ subsidiaries of Indian banks. In case of NBFCs-MFIs, other eligible MFIs, not for profit companies and NGOs, ECB can also be availed from overseas organisations and individuals.		

Minimum Average Maturity Period

The minimum average maturities for the three tracks are set out as under:			Minimum average maturity period (MAMP) will be 3 years. However, manufacturing sector companies may raise ECBs with MAMP of 1 year for ECB up to USD 50 million or its equivalent per financial year. Further, if the ECB is raised from foreign equity holder and utilised for working capital purposes, general corporate purposes or repayment of Rupee loans, MAMP will be 5 years. The call and put option, if any, shall not be exercisable prior to completion of minimum average maturity.	For ECB exceeding USD 50 million, no MAMP is specified and hence, could be considered as 3 years
Old ECB Regulation read with Master Direction on ECB updated as on 22nd November, 2018			**New ECB regulation read with Circular No. 17 dated 16 thJan 2019**	**Comments**
Track:1 i. For ECB up to USD 50 million or its equivalent for Cos in Mfg sector only – 1 year; ii. For ECB upto USD 50 million or its equivalent - 3 years; iii. For ECB beyond USD 50 million or its equivalent – 5 years iv. 5 years for ECB taken from equity holder for working capital purposes v. 5 years for FCCBs/ FCEBs irrespective of the amount of borrowing. The call and put option, if any, for FCCBs shall not be exercisable prior to 5 years.	**Track :2** 10 years irrespective of the amount.	**Track: 3** Same as under Track I.		

All-in-cost ceiling per annum and other cost

<table>
<tr><td colspan="3">The all-in-cost requirements for the three tracks will be as under:</td><td rowspan="2">i) No change in all in cost ceilings</td><td rowspan="2">No change</td></tr>
<tr><td>Track :1
i. The all-in-cost ceiling is prescribed through a spread over the benchmark, i.e., 450 basis points per annum over 6 month LIBOR or applicable benchmark for the respective currency.
ii. Penal interest, if any, for default or breach of covenants should not be more than 2 per cent over and above the contracted rate of interest.</td><td>Track :2
i All-in-cost ceiling - Same as Track I
ii Penal interest – same as Track I</td><td>Track :3
i. All-in-cost ceiling - 450 basis points per annum over the prevailing yield of the Government of India securities of same maturity.
ii. Penal interest - Same as Track I</td></tr>
</table>

End-uses (Negative list)

Old ECB Regulation read with Master Direction on ECB updated as on 22nd November, 2018	**New ECB regulation read with Circular No. 17 dated 16 th Jan 2019**	**Comments**

The end-use prescriptions for ECB raised under the three tracks are as under: The negative list for all Tracks would include the following: a. Investment in real estate or purchase of land except when used for affordable housing as defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India, construction and development of SEZ and industrial parks/integrated townships. b. Investment in capital market. c. Equity investment. Additionally, for Tracks I and III, the following negative end uses will also apply except when raised from Direct and Indirect equity holders or from a Group company, and provided the loan is for a minimum average maturity of five years: d. Working capital purposes. e. General corporate purposes. f. Repayment of Rupee loans. Finally, for all Tracks, the following negative end use will also apply: g. On-lending to entities for the above activities from (a) to (f)	The negative list for which ECB proceeds cannot be utilised is largely similar as erstwhile ECB regulations. However, earlier negative list used the phrase investment in real estate or purchase of land. In the new ECB regulations, above phrase has been replaced by real estate activities which has been defined above. Further, proceeds of ECB cannot be used for payment of interest / charges for ECB.	Real estate activity specifically excludes purchase / long term leasing of industrial land as part of new project / modernisation or expansion of existing unit. Hence, going forward ECB can be utilised towards purchase of industrial land for expansion of existing unit or setting up of new unit.

Change of currency of borrowing

Designated AD Category I banks may allow changes in the currency of borrowing of the ECB to any other freely convertible currency or to INR subject to compliance with other prescribed parameters. Change of currency of INR denominated ECB is not permitted.	No change	NA

Individual limits of borrowing

Old ECB Regulation read with Master Direction on ECB updated as on 22nd November, 2018	**New ECB regulation read with Circular No. 17 dated 16 thJan 2019**	**Comments**

The individual limits of ECB that can be raised by eligible entities under the automatic route per financial year for all the three tracks are set out as under: a. Up to USD 750 million or equivalent for the companies in infrastructure and manufacturing sectors, Non-Banking Financial Companies -Infrastructure Finance Companies (NBFC-IFCs), NBFCs-Asset Finance Companies (NBFC-AFCs), Holding Companies and Core Investment Companies; b. Up to USD 200 million or equivalent for companies in software development sector; c. Up to USD 100 million or equivalent for entities engaged in micro finance activities; d. Up to USD 500 million or equivalent for remaining entities; and e. Up to USD 3 million or equivalent for startups; ii. ECB proposals beyond aforesaid limits will come under the approval route. For computation of individual limits under Track III, exchange rate prevailing on the date of agreement should be taken into account. iii. In case the ECB is raised from direct equity holder, aforesaid individual ECB limits will also subject to ECB liability: equity ratio requirement. The ECB liability of the borrower (including all outstanding ECBs and the proposed one) towards the foreign equity holder should not be more than seven times of the equity contributed by the latter. This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.	All eligible borrowers (excluding startups) can now raise ECB up to USD 750 million or equivalent per financial year under auto route. Rest of the conditions, including ECB equity ratio in case of borrowings from foreign equity holder would remain the same.	Expansion of individual limits

Parking of ECB proceeds

ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below: **Parking of ECB proceeds abroad:** ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above and (c) deposits with overseas branches/ subsidiaries of Indian banks abroad. **Parking of ECB proceeds domestically:** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months. These term deposits should be kept in unencumbered position.	No change	NA

Reporting

Loan Registration Number (LRN): Any draw-down in respect of an ECB as well as payment of any fees / charges for raising an ECB should happen only after obtaining the LRN from RBI. To obtain the LRN, borrowers are required to submit duly certified Form 83, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Balance of Payments Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051, Contact numbers 022-26572513 and 022-26573612. Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank. **Changes in terms and conditions of ECB:** Permitted changes in ECB parameters should be reported to the DSIM through revised Form 83 at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form 83 the changes should be specifically mentioned in the communication. **Reporting of actual transactions:** The borrowers are required to report actual ECB transactions through ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in ECB 2 Return. Format of ECB 2 Return is available at Annex III of Part V of Master Directions – Reporting under Foreign Exchange Management Act. **Reporting on account of conversion of ECB into equity:** In case of partial or full conversion of ECB into equity, the reporting to the RBI will be as under: i. For partial conversion, the converted portion is to be reported to the concerned Regional Office of the Foreign Exchange Department of RBI in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in ECB 2 Return will be with suitable remarks "ECB partially converted to equity". ii. For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in ECB 2 Return should be done with remarks “ECB fully converted to equity”. Subsequent filing of ECB 2 Return is not required. iii. For conversion of ECB into equity in phases, reporting through ECB 2 Return will also be in phases.	Name of form for obtaining LRN from RBI has changed from old Form 83 to new Form ECB. Hence, wherever Form 83 was required to be filed, going forward Form ECB would be required to be filed. However, contents of the form are same. Further, ECB 2 filing continues to remain as before. Additionally, in part D of Form ECB 2 details with respect to proceeds of ECB parked domestically is also required to be stated.	Change in name of Form 83 to Form ECB and details of ECB parked domestically to be provided in Form ECB 2

Late submission fees

Old ECB Regulation read with Master Direction on ECB updated as on 22nd November, 2018	New ECB regulation read with Circular No. 17 dated 16 th Jan 2019	Comments

No such provision existed earlier. Any late filing of forms was subject to compounding proceedings	**Late Submission Fee (LSF) for delay in reporting:** Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as given in **Annexure 1**	Going forward, process of regularising ECB non compliances relating to late filing of forms or drawdown of ECB before obtaining LRN would be much simpler and would not be subject to compounding proceedings. However, with respect to past non-compliances, compounding proceedings would still need to be undertaken

Exchange rate

The exchange rate for foreign currency – Rupee conversion shall be the market rate on the date of settlement for the purpose of transactions undertaken for issue and servicing of the bonds	No change	NA

Hedging Requirements

Borrowers eligible shall have a board approved risk management policy and shall keep their ECB exposure hedged 70 per cent at all times in case the average maturity is less than 5 years. Further, the designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of ECB and report the position to RBI through ECB 2 returns. Also, the entities raising ECB under the provisions of tracks I and II are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure. **Operational aspects on hedging:** Wherever hedging has been mandated by the RBI, the following should be ensured: i. **Coverage:** The ECB borrower will be required to cover principal as well as coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day liability is created in the books of the borrower). ii. **Tenor and rollover:** A minimum tenor of one year of financial hedge would be required with periodic rollover duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of ECB. iii. **Natural Hedge:** Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting year. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as natural hedge.	No change	NA

Available routes for raising ECB

Old ECB Regulation read with Master Direction on ECB updated as on 22nd November, 2018	**New ECB regulation read with Circular No. 17 dated 16 thJan 2019**	**Comments**
Under the ECB framework, ECBs can be raised either under the automatic route or under the approval route. For the automatic route, the cases are examined by the Authorised Dealer Category-I (AD Category-I) banks. Under the approval route, the prospective borrowers are required to send their requests to the RBI through their ADs for examination. While the regulatory provisions are mostly similar, there are some differences in the form of amount of borrowing, eligibility of borrowers, permissible end-uses, etc. under the two routes. While the first six forms of borrowing can be raised both under the automatic and approval routes, FCEBs can be issued only under the approval route.	No change	NA

ECB for untraceable entities

No specific regulation earlier	Specific Standard Operating Procedure (SOP) laid down which has to be followed by designated AD banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECBs by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more. i. **Definition:** Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/reminders numbering 6 or more and it fulfills both of the following conditions: a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorized by the AD bank for the purpose; AND b) Entities have not submitted Statutory Auditor's Certificate for last two years or more;	Entire new process has been laid down to find untraceable entities who have taken ECB

	ii. Action: The followings actions are to be undertaken in respect of 'untraceable entities': a) File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means; b) No fresh ECB application by the entity should be examined/processed by the AD bank; c) Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and d) No inward remittance or debt servicing will be permitted under auto route.	

(IV) Key changes in Regulations governing Trade Credits

Key changes between old ECB regulations and new ECB regulations relating to trade credits are highlighted as under:

Particulars	**Old ECB Regulations**	**New ECB Regulations**	**Comments**
Amount of borrowing	USD 20 million per import transaction	USD 50 million per import transaction	Increase in limit of trade credit
Period	Import of capital goods – 5 years from date of shipment Import of non-capital goods – 1 year from date of shipment or operating cycle, whichever is less	Import of capital goods – 3 years from date of shipment Import of non-capital goods – 1 year from date of shipment or operating cycle, whichever is less	Trade credit period for import of capital goods has been reduced from 5 years to 3 years

Trade credit beyond permitted period	No specific provision in respect of trade credit extending beyond above specified period	Specifically provides trade credit beyond 3 years period to be ECB	There have been several instances wherein RBI has compounded non compliances relating to trade credit extending beyond specified period by viewing it as ECB. The same has now been specifically included in new ECB regulations.
Recognised lenders	Overseas suppliers, banks, financial institutions,	Lenders to also include foreign equity holders and financial institutions in IFC	Recognised lenders list expanded to include foreign equity holders and financial institutions in IFC. Hence, they can also give trade credits
Cost	All-in-cost ceiling for raising trade credit was 350 basis points over 6 month LIBOR	All-in-cost ceiling for raising trade credit reduced to 250 basis points over 6 month LIBOR	Reduction in all in cost ceiling for raising trade credits

(V) Key changes in Regulations governing borrowings in INR by Indian residents

Borrowing by Indian companies

Under the erstwhile ECB regulations, investment in Non convertible debentures (NCD) issued by Indian companies to Registered Foreign Portfolio Investors was not covered under the ECB framework. The said position continues even under the new ECB regulations.

Further, under INR Borrowing Regulations, Indian companies could borrow in rupees from NRIs/PIOs by issuing NCDs and subject to fulfilment of conditions laid down therein. However, under New ECB regulations, there is no specific regulations governing issuance of NCDs by Indian companies to NRI/PIOs. Accordingly, we would need to wait for further clarity on this issue.

Borrowing by Indian individuals

Under the erstwhile INR Borrowing regulations, person resident in India (other than an Indian company) could borrow in rupees from NRI/PIO on non-repatriation basis subject to fulfilment of certain conditions. Under the New ECB Regulations, person resident in India (other than an Indian company) can borrow in Indian Rupees from NRI/ Relatives who are holding OCI Card subject to terms and conditions as would be specified by RBI in this behalf.

Thus, as against borrowings from any NRI/PIO permissible earlier, under New ECB Regulations, INR borrowings can be taken only from NRI or Relatives who are holding OCI Card.

Deposits by person resident in India

Any person resident in India can accept deposits from person resident outside India in accordance with Foreign Exchange Management (Deposit) Regulations, 2016. Hence, there is no change with regards to acceptance of deposits.

(VI) Key changes in Regulations governing borrowings by financial institutions, students studying abroad and from relatives

Borrowing by financial institutions

Under the new ECB regulations, financial institutions set up under an act of Parliament have been given permission to raise ECB under the approval route for the purpose of onward lending and subject to provisions contained in ECB regulations.

Borrowing by students studying abroad

Under the new ECB regulations, individual resident in India but studying abroad can raise loan not exceeding USD 250,000 for payment of education fees and maintenance abroad subject to terms and conditions specified by RBI. However, it is interesting to note that as per A.P.(DIR Series) Circular No. 45 dated 8 December 2003, Indian students studying abroad would be treated as Non-residents, i.e. person resident outside India. In such a scenario, applicability of FEMA on the such students would need to be evaluated.

Borrowing in foreign currency by Indian individuals

Under the old ECB regulations, individual resident in India could borrow a sum not exceeding USD 250,000 from his relative subject to fulfilment of certain conditions. The same position continues even under new ECB regulations.

(VII) Regulations governing lending in foreign currency by Indian entities

New ECB regulations provide that an entity resident in India can provide external commercial lending in foreign exchange to foreign entity in accordance with provisions of ODI Regulations. Hence, there is no change with respect to the said regulations.

(VIII) Regulations governing issuance of Foreign Currency Convertible Bonds & Foreign Currency Exchangeable Bonds by Indian companies

Regulation 21 of ODI Regulations which dealt with issuance of Foreign Currency Convertible Bonds and Foreign Currency Exchangeable Bonds has now been omitted and it would be governed under the process specified in New ECB Regulations read with Circular 17.

Way forward

Going forward, it is expected that RBI would issue Circulars clarifying various aspects of New ECB Regulations as well as issue Regulations governing hybrid instruments in the nature of optionally convertible debentures which are at present covered under ECB Regulations.

Annexure 1 – Matrix for computing late submission fee for delay in reporting

No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	Rs. 5,000
2	Form ECB 2/Form ECB	Up to 3 years from due date of submission/date of drawdown	Rs. 50,000 per year
3	Form ECB 2/Form ECB	Beyond 3 years from due date of submission/date of drawdown	Rs. 100,000 per year

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