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External Commercial Borrowings (ECBs) are loans in India made by non-resident lenders in foreign currency to Indian borrowers. They are used widely in India to facilitate access to foreign money by Indian corporations and PSUs (public sector undertakings). ECBs include commercial bank loans, buyers' credit, suppliers' credit, securitized instruments such as floating rate notes and fixed rate bonds etc., credit from official export credit agencies and commercial borrowings from the private sector window of multilateral financial Institutions such as International Finance Corporation (Washington), ADB, AFIC, CDC, etc. ECBs cannot be used for investment in stock market or speculation in real estate. The DEA (Department of Economic Affairs), Ministry of Finance, Government of India along with Reserve Bank of India, monitors and regulates ECB guidelines and policies.

Borrowers can use 25 per cent of the ECB to repay rupee debt and the remaining 75 per cent should be used for new projects. A borrower cannot refinance its entire existing rupee loan through ECB. The money raised through ECB is cheaper given near-zero interest rates in the US and Europe, Indian companies can repay part of their existing expensive loans from that.

Guidelines on ECBs

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. ECB can be accessed under two routes, viz., (i) Automatic Route outlined in paragraph 1(A) and (ii) Approval Route indicated in paragraph 1(B).

ECBs can be accessed under two routes, viz.,

- Automatic Route
- Approval Route

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Automatic Route

The following types of proposals for ECBs are covered under the Automatic Route.

Eligible borrowers

- Corporates, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956) and Infrastructure Finance Companies (IFCs) except financial intermediaries, such as banks, financial institutions (FIs), Housing Finance Companies (HFCs) and Non-Banking Financial Companies (NBFCs) are eligible to raise ECB. **Individuals, Trusts and Non-Profit making organizations are not eligible to raise ECB.**
- Units in Special Economic Zones (SEZ) are allowed to raise ECB for their own requirement.
- Non-Government Organizations (NGOs) engaged in micro finance activities are eligible to avail of ECB. Such NGOs
 - (i) should have a satisfactory borrowing relationship for at least 3 years with a scheduled commercial bank authorized to deal in foreign exchange in India and
 - (ii) would require a certificate of due diligence on `fit and proper status of the Board / Committee of management of the borrowing entity from the designated AD bank.
- Micro Finance Institutions (MFIs) engaged in micro finance activities are eligible to avail of ECBs. MFIs registered under the Societies Registration Act, 1860, MFIs registered under Indian Trust Act, 1882, MFIs registered either under the conventional state-level cooperative acts, the national level multi-state cooperative legislation or under the new state-level mutually aided cooperative acts (MACS Act) and not being a co-operative bank, Non-Banking Financial Companies (NBFCs) categorized as Non Banking Financial Company-Micro Finance Institutions (NBFC-MFIs) and complying with the norms prescribed and are involved in micro finance activities.

Recognized Lenders

- Borrowers can raise ECB from internationally recognized sources such as
- international banks
- international capital markets

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- multilateral financial institutions (such as IFC, ADB, CDC, etc.) / regional financial institutions and Government owned development financial institutions,
- export credit agencies
- suppliers of equipment
- foreign collaborators
- foreign equity holders (other than erstwhile Overseas Corporate Bodies (OCBs)).

Amount and Maturity

- The maximum amount of ECB which can be raised by a corporate other than those in the hotel, hospital and software sectors is USD 750 million or its equivalent during a financial year.
- Corporates in the services sector viz. hotels, hospitals and software sector are allowed to avail of ECB up to USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. **The proceeds of the ECBs should not be used for acquisition of land..**
- ECB up to USD 20 million or its equivalent in a financial year with minimum average maturity of three years.
- ECB above USD 20 million or equivalent and up to USD 750 million or its equivalent with a minimum average maturity of five years.
- NGOs engaged in micro finance activities and Micro Finance Institutions (MFIs) can raise ECB up to USD 10 million or its equivalent during a financial year. Designated AD bank has to ensure that at the time of drawdown the **forex** exposure of the borrower is **fully hedged**.

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. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost.

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The all-in-cost ceilings for ECB are reviewed from time to time. The following ceilings are valid until reviewed

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and up to five years	350 basis points
More than five years	500 basis points

*for the respective currency of borrowing or applicable benchmark In the case of fixed rate loans, the swap cost plus margin should be the equivalent of the floating rate plus the applicable margin.

End-use

- ECB can be raised for investment [such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/expansion of existing production units] in real sector - industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors namely hotel, hospital, software in India.
- Overseas direct investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/ WOS abroad.
- Utilization of ECB proceeds is permitted for first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Governments disinvestment programme of PSU shares.
- For lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building by NGOs engaged in micro finance activities.
- Payment for Spectrum Allocation.
- Infrastructure Finance Companies (IFCs) i.e. Non Banking Financial Companies (NBFCs) categorized as IFCs by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy, subject to their complying with the following conditions: i) compliance with the norms prescribed in the DNBS Circular DNBS.PD.CCNo.168 / 03.02.089 / 2009-10 dated February 12, 2010 ii) hedging of the currency risk in full.

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Designated Authorized Dealer should ensure compliance with the extant norms while certifying the ECB application.

- Interest During Construction (IDC) for Indian companies which are in the infrastructure sector, where infrastructure is defined as per the extant ECB guidelines, subject to IDC being capitalized and forming part of the project cost.
- Maintenance and operations of toll systems for roads and highways for capital expenditure provided they form part of the original project.

End-uses not permitted

- For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate [investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc., are also considered as investment in capital markets).
- for real estate sector
- for working capital, general corporate purpose and repayment of existing Rupee loans.

Guarantees

- Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) from India relating to ECB is not permitted.

Security

- The choice of security to be provided to the lender/supplier is left to the borrower. However, creation of charge over immoveable assets and financial securities, such as shares, in favour of the 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, as amended from time to time. AD Category - I banks have been delegated powers to convey no objection under the Foreign Exchange Management Act (FEMA), 1999 for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised by the borrower.

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Procedure

- Borrowers may enter into loan agreement complying with the ECB guidelines with recognized lender for raising ECB under Automatic Route without the prior approval of the Reserve Bank. The borrower must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB. The procedure for obtaining LRN is detailed in para II (i) (b).

Approval Route

Eligible borrowers

The following types of proposals for ECB are covered under the Approval Route

- On lending by the EXIM Bank for specific purposes will be considered on a case by case basis.
- Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government are also permitted to the extent of their investment in the package and assessment by the Reserve Bank based on prudential norms. Any ECB availed for this purpose so far will be deducted from their entitlement.
- ECB with minimum average maturity of 5 years by Non-Banking Financial Companies (NBFCs) from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects.
- Infrastructure Finance Companies (IFCs) i.e. Non-Banking Financial Companies (NBFCs), categorized as IFCs, by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, beyond 50 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy, subject to their complying with the following conditions:
 - i) compliance with the norms prescribed in the DNBS Circular DNBS.PD.CCNo.168 / 03.02.089 /2009-10 dated February 12, 2010
 - ii) hedging of the currency risk in full. Designated Authorised Dealer should ensure compliance with the extant norms while certifying the ECB application.

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- Foreign Currency Convertible Bonds (FCCBs) by Housing Finance Companies satisfying the following minimum criteria:
 - i) the minimum net worth of the financial intermediary during the previous three years shall not be less than Rs. 500 crore,
 - ii) a listing on the BSE or NSE,
 - iii) minimum size of FCCB is USD 200 million and
 - iv) the applicant should submit the purpose / plan of utilization of funds.
- Special Purpose Vehicles, or any other entity notified by the Reserve Bank, set up to finance infrastructure companies / projects exclusively, will be treated as Financial Institutions and ECB by such entities will be considered under the Approval Route.
- Multi-State Co-operative Societies engaged in manufacturing activity and satisfying the following criteria i) the Co-operative Society is financially solvent and ii) the Co-operative Society submits its up-to-date audited balance sheet.
- SEZ developers can avail of ECBs for providing infrastructure facilities within SEZ, as defined in the extant ECB policy like (i) power, (ii) telecommunication, (iii) railways, (iv) roads including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.
- Corporates in the services sector viz. hotels, hospitals and software sector can avail of ECB beyond USD 200 million per financial year.
- Corporates which have violated the extant ECB policy and are under investigation by the Reserve Bank and / or Directorate of Enforcement are allowed to avail of ECB only under the approval route.
- Cases falling outside the purview of the automatic route limits and maturity period indicated at paragraph A (iii).
- Eligible borrowers under the automatic route other than corporates in the services sector viz. hotel, hospital and software can avail of ECB beyond USD 750 million or equivalent per financial year

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Recognised Lenders:

- Borrowers can raise ECB from internationally recognized sources such as
 - i) international banks,
 - ii) international capital markets,
 - iii) multilateral financial institutions (such as IFC, ADB, CDC, etc.)/ regional financial institutions and Government owned development financial institutions,
 - iv) export credit agencies,
 - v) suppliers' of equipment,
 - vi) foreign collaborators and
 - vii) foreign equity holders (other than erstwhile OCBs).
- From 'foreign equity holder' where the minimum paid-up equity held directly by the foreign equity lender is 25 per cent but ECBs: equity ratio exceeds 4:1 (i.e. the proposed ECB exceeds four times the direct foreign equity holding).

Amount and Maturity

- Eligible borrowers under the automatic route other than corporates in the services sector viz. hotel, hospital and software can avail of ECB beyond USD 750 million or equivalent per financial year. Corporates in the services sector viz. hotels, hospitals and software sector are allowed to avail of ECB beyond USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.
- Indian companies which are in the infrastructure sector, as defined under the extant ECB guidelines, can avail of ECBs in Renminbi (RMB), subject to an annual ceiling of USD one billion for the entire sector, pending further review

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. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost.

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The all-in-cost ceilings for ECB are reviewed from time to time. The following ceilings are valid until reviewed

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and up to five years	350 basis points
More than five years	500 basis points

*for the respective currency of borrowing or applicable benchmark In the case of fixed rate loans, the swap cost plus margin should be the equivalent of the floating rate plus the applicable margin.

End-use

- ECB can be raised only for investment [such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), implementation of 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) roads including bridges (v) sea port and airport (vi) industrial parks (vii) urban infrastructure (water supply, sanitation and sewage projects) (viii) mining, exploration and refining and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.
- Overseas direct investment in Joint Ventures (JV)/Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad..
- The payment by eligible borrowers in the Telecom sector, for spectrum allocation may, initially, be met out of Rupee resources by the successful bidders, to be refinanced with a long-term ECB, under the approval route, subject to the following conditions
 - The ECB should be raised within 12 months from the date of payment of the final installment to the Government;

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- The designated AD - Category I bank should monitor the end-use of funds;
- Banks in India will not be permitted to provide any form of guarantees; and
- All other conditions of ECB, such as eligible borrower, recognized lender, all-in-cost, average maturity, etc, should be complied with.
- 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.
- Repayment of Rupee loans availed of from domestic banking system : Indian companies which are in the infrastructure sector(except companies in the power sector), as defined under the extant ECB guidelines , are permitted to utilize 25 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system, subject to the following conditions
 - at least 75 per cent of the fresh ECB proposed to be raised should be utilized for capital expenditure towards a new infrastructure project(s)
 - in respect of remaining 25 per cent, the refinance shall only be utilized for repayment of the Rupee loan availed of for capital expenditure of earlier completed infrastructure project(s); and
 - the refinance shall be utilized only for the Rupee loans which are outstanding in the books of the financing bank concerned.
- Companies in the power sector are permitted to utilize up to 40 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system subject to the condition that at least 60 per cent of the fresh ECB proposed to be raised should be utilized for fresh capital expenditure for infrastructure project(s).
- Interest During Construction (IDC) for Indian companies which are in the infrastructure sector, as defined under the extant ECB guidelines subject to IDC being capitalized and forming part of the project cost.
- Bridge Finance : Indian companies which are in the infrastructure sector, as defined under the extant ECB policy are permitted to import capital goods by availing of short term credit (including buyers / suppliers credit) in the nature of 'bridge finance', under the approval route, subject to the following conditions
 - the bridge finance shall be replaced with a long term ECB

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- the long term ECB shall comply with all the extant ECB norms; and
- prior approval shall be sought from the Reserve Bank for replacing the bridge finance with a long term ECB.
- ECB for working capital for civil aviation sector : Airline companies registered under the Companies Act, 1956 and possessing scheduled operator permit license from DGCA for passenger transportation are eligible to avail of ECB for working capital. Such ECBs will be allowed based on the cash flow, foreign exchange earnings and the capability to service the debt and the ECBs can be raised with a minimum average maturity period of three years. The overall ECB ceiling for the entire civil aviation sector would be USD one billion and the maximum permissible ECB that can be availed by an individual airline company will be USD 300 million. This limit can be utilized for working capital as well as refinancing of the outstanding working capital Rupee loan(s) availed of from the domestic banking system. ECB availed for working capital/refinancing of working capital as above will not be allowed to be rolled over. The foreign exchange for repayment of ECB should not be accessed from Indian markets and the liability should be extinguished only out of the foreign exchange earnings of the borrowing company.
- Repayment of Rupee loans and/or fresh Rupee capital expenditure for companies with forex earnings : Indian companies in the manufacturing and infrastructure sector can avail of ECBs for repayment of Rupee loans availed of for capital expenditure from the domestic banking system which are still outstanding and/or fresh Rupee capital expenditure provided they are consistent foreign exchange earners during the past three financial years and not in the default list/caution list of the Reserve Bank of India. The overall limit for such ECBs is USD 10 billion and the maximum permissible ECB that can be availed of by an individual company will be limited to 50 per cent of the average annual export earnings realized during the past three financial years. The foreign exchange for repayment of ECB should not be accessed from Indian markets and and the liability arising out of ECB should be extinguished only out of the foreign exchange earnings of the borrowing company.

End-uses not permitted

- For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate except Infrastructure Finance Companies (IFCs), banks and financial institutions eligible under paragraph I (B) (i) (a), (b) and (d).
- For real estate.
- For working capital and general corporate purpose and repayment of existing Rupee loans except as specifically permitted as per details given hereinabove,

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Guarantees:

- Issuance of guarantee, standby letter of credit, letter of undertaking 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.

Security

- Issuance of guarantee, standby letter of credit, letter of undertaking 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.
- With a view to facilitating capacity expansion and technological upgradation in Indian textile industry, issue of guarantees, standby letters of credit, letters of undertaking and letters of comfort by banks in respect of ECB by textile companies for modernization or expansion of textile units will be considered under the Approval Route subject to prudential norms.

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 the 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 as amended from time to time, respectively. Powers have been delegated to Authorised Dealer Category I banks to issue necessary NOCs under FEMA as detailed in para I (A) (viii) *ibid*.

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Parking of ECB proceeds

Borrowers are permitted to either keep ECB proceeds abroad or to remit these funds to India, pending utilization for permissible end-uses.

ECB proceeds parked overseas 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. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

ECB funds may also be repatriated to India for credit to the borrowers' Rupee accounts with AD Category I banks in India pending utilization for permissible end-uses.

The proceeds of the ECB raised abroad meant for Rupee expenditure in India, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc. should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization. The rupee funds, however, will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending.

Prepayment

- Prepayment of ECB up to USD 500 million may be allowed by the AD bank without prior approval of the Reserve Bank subject to compliance with the stipulated minimum average maturity period as applicable to the loan.
- Pre-payment of ECB for amounts exceeding USD 500 million would be considered by the Reserve Bank under the Approval Route.

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Refinance of existing ECB:

- Existing ECB may be refinanced by raising a fresh ECB at a higher all-in-cost subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling prescribed as per the extant guidelines.
- An existing ECB can be rescheduled at a higher all-in-cost subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling prescribed as per the extant guidelines.

Debt Servicing:

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