

**Foreign Direct
Investment**



**EXTERNAL COMMERCIAL
BORROWING**

NEWSLETTER

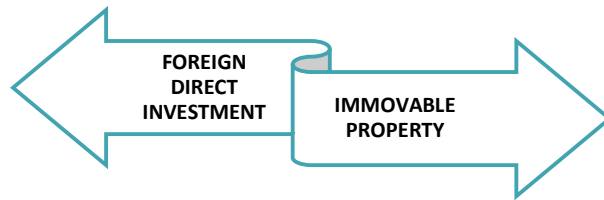
July 2021

Inside:

1. Foreign Direct Investment (FDI)
2. External Commercial Borrowings (ECB)
3. Compliance Calendar (July 2021)

FOREIGN INVESTMENTS IN INDIA

Foreign Investment in India may be done through the following two ways:



The erstwhile FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations have been replaced with the FEMA (Non-Debt Instruments) Regulations, 2021. FEMA (Non-Debt Instruments) Regulations deal with the investments that can be made in India whether through investment in capital instruments or investment in immovable properties.

As the name suggests, Non-Debt Instruments includes and is not exhaustive of:



❖ KEY DEFINITION:

- ❖ **Capital instruments** means the equity shares, debentures, preference shares and share warrants issued by the Indian Company. Partly paid-up shares will be considered as capital instruments, subject to certain conditions.
- ❖ **Person resident outside India** means a person who is not a person resident in India. A person resident in India is a person who has stayed in India for a period of at least 182 days, subject to certain exceptions.
- ❖ **Fully diluted basis** means the total shares that will outstanding after all the possible conversions that can be made in the Company.

❖ INVESTMENT IN CAPITAL INSTRUMENTS

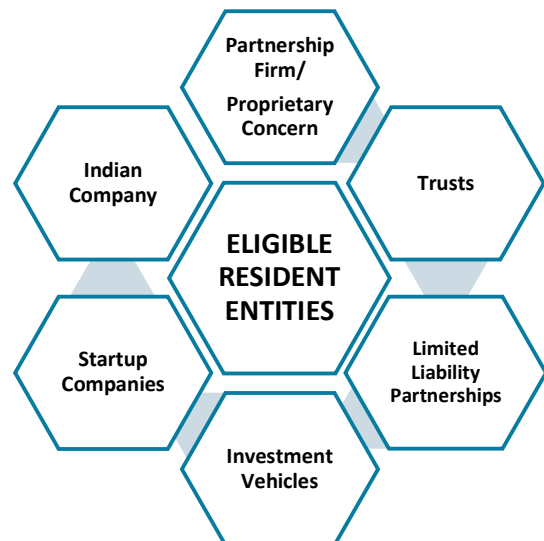
Investment in Capital Instruments, known as **Foreign Direct Investment ('FDI')** is an investment made through capital instruments by a person resident outside India

- a. In an unlisted Indian company (irrespective of the percentage of the investment made)
- b. In 10% or more of the post issue paid up capital on a fully diluted basis of a listed Indian Company.

❖ ELIGIBLE INVESTORS

- Non resident entity. If shares land border with India then only through Government route
- Nepal and Bhutan are permitted only on repatriation basis. Consideration paid to be in normal banking channels and in free Foreign Exchange
- Company, Trust, PSF owned by NRI
- FPI may make investment as per Schedule II
- Registered NRI or FPI may invest through broker
- FVCI may make investment as per Schedule VII.

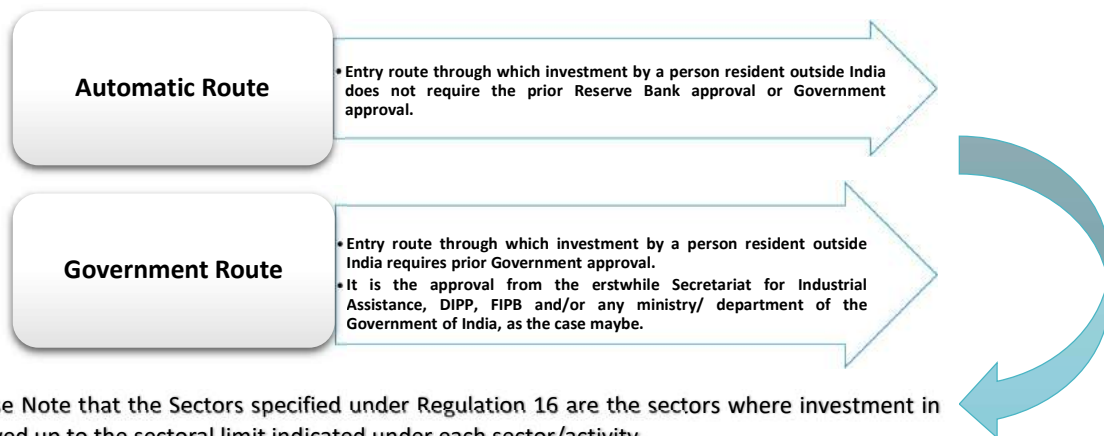
ELIGIBLE RESIDENT ENTITIES



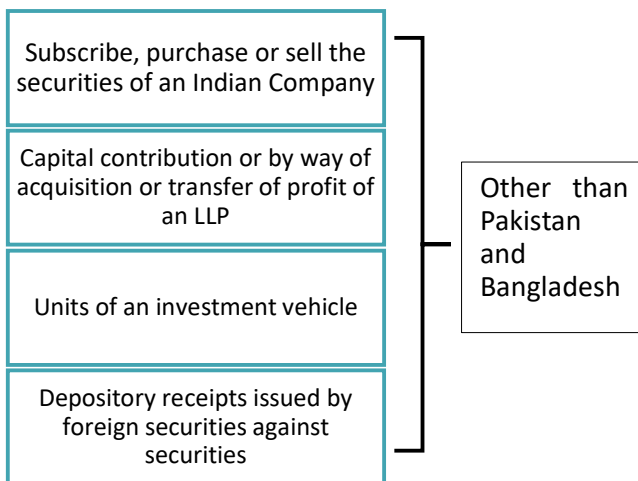
❖ PROHIBITED SECTORS

- Lottery Business including Government/ private lottery, online lotteries
- Gambling and betting including casinos
- Chit funds & Nidhi Company
- Trading in Transferable Development Rights
- Real Estate Business or Construction of Farm Houses
- Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- Activities/ sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations
- Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

❖ ENTRY ROUTES



❖ MODES OF FDI



❖ MODES OF OFFER & SUBSCRIPTION



❖ INVESTMENT THROUGH RIGHTS ISSUE OR BONUS ISSUE

- a) Compliance with the Companies Act, 2013
- b) Shareholding shall be acquired by complying the provisions of such an investment
- c) The shares acquired over which the rights or bonus issue is being done shall be acquired as per the provisions of FEMA
- d) The same conditions shall also be applicable when shares are acquired on a non-repatriation basis

PRICING OF SHARES UNDER RIGHTS ISSUE

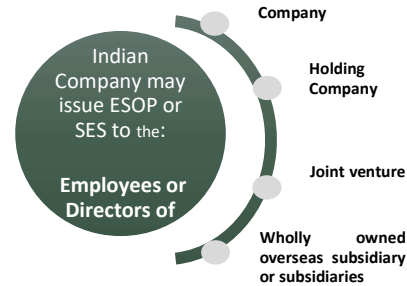
In case of listed companies, price is what is determined by the Company

In case of unlisted companies, price shall not be less than what is offered to resident shareholders

Under the Companies Act, 2013, the Act is silent on the pricing of the shares under the Rights Issue.

However, for listed companies, under SEBI(ICDR)Regulations, it is provided that the issue price shall not be less than the face value of the specified securities

❖ INVESTMENT IN ESOP OR SWEAT EQUITY SHARES BY PROI



Government approval is required in the following cases:

1. In the company where the investment is made, is under the approval route
2. When the issue is being done to a citizen of Bangladesh/Pakistan

❖ INVESTMENT BY FOREIGN PORTFOLIO INVESTOR (FPI):

🚩 Who is an FPI?

FPI means a person registered with the SEBI under the FPI Regulations, 2019.

🚩 Can FPI only make Foreign Portfolio Investment?

Yes. When we look into the definition of foreign portfolio investment, it says less than 10% of the paid-up capital on a fully diluted basis or less than 10% of the paid-up value of each series of capital instruments of the listed Indian Company.

Schedule II that is investment by FPI under the FEMA (Non-Debt Instruments) Rules, 2019 provides for the same requirements.

🚩 Can FPI invest in other securities of unlisted companies?

In SEBI's Informal Guidance dated January 24, 2020, it has been stated that the FPI may make investment in unlisted NCD or bonds.

❖ INVESTMENT FROM COUNTRIES THAT SHARE LAND BORDER WITH INDIA

Entity is situated in such country

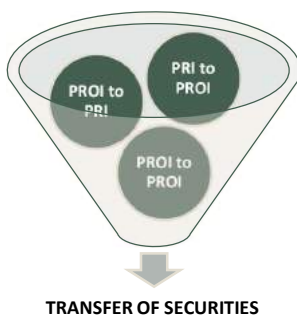
Beneficial owner is in such country



Will be required to take Government approval

If the Country is Pakistan, then they can only invest in sectors other than defense, atomic energy and the sectors prohibited.

❖ TRANSFER OF SHARES



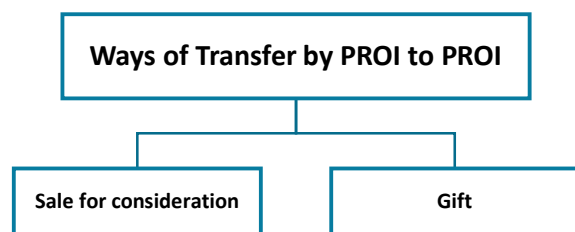
❖ **Person resident outside India (PROI):** is a person if he stays outside India for a period of 182 days or more in the preceding financial year.

❖ **Person resident in India (PRI):** is a person if he stays in India for a period of 182 days or more in the preceding financial year. However, there are two exceptions to this general rule.

- 1) **Person leaving India** for any of the following purpose shall not be considered as a resident:
 - a) For taking employment in any other country
 - b) For carrying on any business or vocation outside India
 - c) For any other purpose which indicates his intention to stay outside for an indefinite purpose.
- 2) **If a person comes to India** for an indefinite period for any of the above purposes, then he shall be treated as an Indian resident.
Person resident outside India is a person who is not a person resident in India.

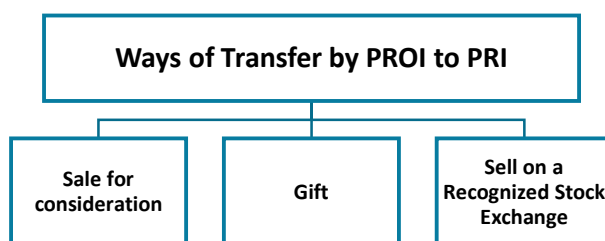
TRANSFER FROM PROI TO PROI

1. Government approval if required;
2. If transferee intends to hold on repatriation basis, then adhere to the entry routes, sectoral caps, investment limits, pricing guidelines, etc.



TRANSFER FROM PROI TO PRI

1. Subject to the pricing guidelines, documentations, reporting requirements, etc.
2. If PROI holds the instruments on a non-repatriable basis, then the above conditions shall not apply.



❖ PRICING GUIDELINES

1. WHEN ISSUED BY INDIAN COMPANY

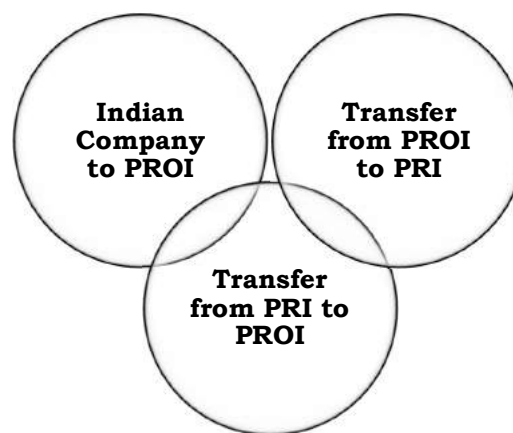
- a) Price shall not be less than the price determined by the SEBI Guidelines
- b) Valuation to be done as per the internationally accepted accounting policies done on an arm's length basis, by a CA or a Merchant banker

2. TRANSFER FROM PRI TO PROI

- a) Price worked out shall be as per the SEBI Guidelines, in case of listed Indian companies
- b) The price at which the preferential allotment can be made under the SEBI Guidelines of a listed company or in case a company is going through a delisting process, as per the SEBI (Delisting) Regulations.
- c) Valuation to be done as per the internationally accepted accounting policies done on an arm's length basis, by a CA or a Merchant banker

3. TRANSFER FROM PRI TO PROI

- a) Price worked out as per the SEBI Guidelines in case of listed companies
- b) The price at which the preferential allotment can be made under the SEBI Guidelines of a listed company or in case a company is going through a delisting process, as per the SEBI (Delisting) Regulations.
- c) Valuation to be done as per the internationally accepted accounting policies done on an arm's length basis, by a CA or a Merchant banker
- d) In case of share warrants, the price shall be determined upfront
- e) When the investment is made by PROI by way of subscription to MOA then such investments shall be made at face value subject to entry route and sectoral cap



❖ DOWNSTREAM INVESTMENT

It is an indirect foreign investment by an eligible Indian entity into another Indian Company/LLP, by way of subscription or acquisition. An eligible resident entity as noted earlier, includes a Company, LLP, Trusts, Investment Vehicles, etc. The investment by an eligible resident entity which has received any foreign investment in a Company or a LLP is known as downstream investment.

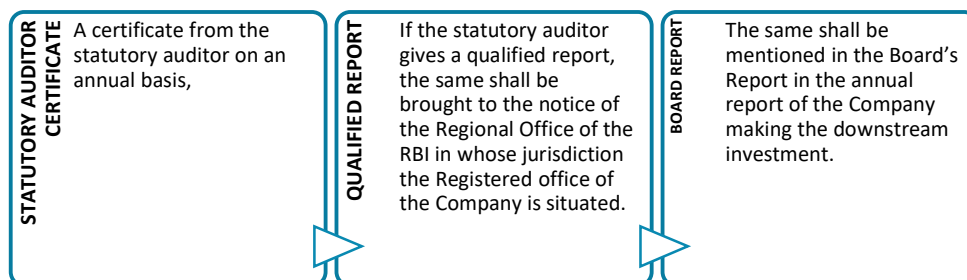
Downstream investment may be done in a Company or LLP. In case of LLP, the following are the additional conditions to be met:

- a. Not owned or controlled by resident Indian citizens
- b. Controlled by PROI is allowed in Indian Company if FDI in the sector is permitted up to 100% and there are no FDI linked performance conditions

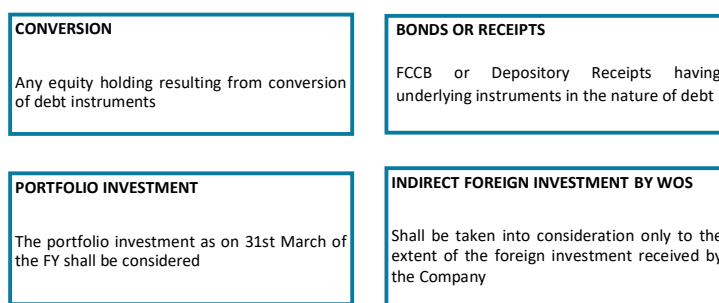
CONDITION OF DOWNSTREAM INVESTMENT FOR THE INVESTEE ENTITY:

- a. BOD Approval and the authorization in the SHA, if any
- b. The Indian entity making the DI, shall not use the funds borrowed in the domestic market, and can be made through internal accruals also.

❖ COMPLIANCE REQUIREMENTS BY THE ENTITIES MAKING THE DOWNSTREAM INVESTMENT



❖ CALCULATION OF TOTAL FOREIGN INVESTMENT



❖ CAN TRADE PAYABLE BE CONVERTED TO FDI ?

- ✓ On plain reading of the definition of FDI under these Rules, it is clear that the any foreign investment will only be considered as FDI when the PROI makes an investment in the capital instruments of the Company.
- ✓ Hence, a trade payable to be converted to FDI, it has to be first converted to capital instruments (equity shares, etc.) post which the investment can be considered as FDI.

❖ REPORTING REQUIREMENTS

A mandatory registration is to be done on the FIRMS Portal of the Reserve Bank of India in order to submit the forms and the Return. Once the registration is completed, the forms may be filed post login into the respective account.

| FORM | WHEN TO BE FILED |
|--------------------|--|
| Form FC-GPR | In case of the initial investment made by the PROI in the eligible resident entities within a period of thirty days of the investment. |
| Form FC-TRS | Transfer of the securities from a PROI to a PRI or vice versa within a period of sixty days of the transfer. |
| FLA Return | On a yearly basis before 15 th of July of that , every year from the year in which the foreign investment was received by the eligible resident entity. |

❖ METHODS OF INVESTMENT IN IMMOVABLE PROPERTY:

GENERAL CONDITION:

Immovable Property acquired cannot be:

- a. Agricultural Property
- b. Plantation property
- c. Farm House



❖ **BY WAY OF PURCHASE:**

The below mentioned points are the conditions for the payment of consideration.

The purchase may be made by a NRI or an OCI.

Funds received from normal banking channels by way of inward remittance from any place outside India

Funds are held in a non-resident account, in accordance with the provisions of this Rules, Regulations, etc.

Cannot be done through traveler's cheque, foreign currency notes or any other mode other than what is mentioned specifically



❖ **BY WAY OF GIFT:**

Gift from a PROI, NRI or an OCI who in any case is a relative under section 2(77) of the Companies Act, 2013.



❖ **BY WAY OF INHERITENCE:**

Only when the person from who has deceased had acquired the property

- a) In accordance with the Rules at the time of the acquisition
- b) From a PRI



❖ **REPATRIATION OF SALE PROCEEDS OF IMMOVABLE PROPERTY – CONDITIONS:**

- 1. The immovable property was acquired by the seller, in compliance with the provisions under FEMA at the time of acquisition.
- 2. The amount of the acquisition was paid:
 - a. Foreign exchange in the normal banking channels
 - b. Funds from the **FCNR Account**
 - c. Funds in the **NRE Account**

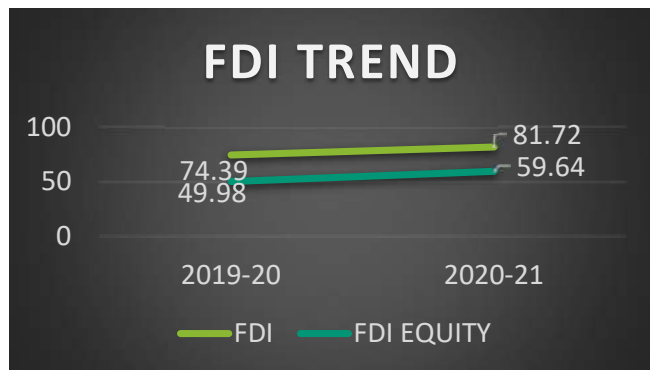
❖ **FDI TREND IN INDIA:**

Top State in the Country receiving FDI:

Gujarat(31%) received the highest FDI Equity inflows followed by Maharashtra(27%) and Karnataka (13%)

Top Investor Countries include:

- 1. Singapore – 29%
- 2. USA – 23%
- 3. Mauritius – 9%



EXTERNAL COMMERCIAL BORROWINGS

❖ GENERAL TERMS & MEANINGS:

ECB can be understood in **two ways**:

- (i) As commercial loans (in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments e.g. floating rate notes and fixed rate bonds etc.) **raised by eligible resident entities** from recognized non-resident entities. Or;
- (ii) Loans in India made **by non-resident lenders** in foreign currency to Indian borrowers.

AUTOMATIC ROUTE

Automatic Route under the ECB Framework requires the prospective borrowers to send their requests to the Reserve Bank through their Authorized Dealer Banks for examination.

Therefore, the borrower shall approach the AD Category-1 Bank with their proposal along with a duly filled ECB Form.

APPROVAL ROUTE

For the **Approval Route**, the cases are examined by the **Authorised Dealer Category-I (AD Category-I) banks**.

1. Application to RBI is made in Form ECB for examination through their AD Category-1 Bank.
2. Application is placed before the Empowered Committee (Empowered Committee shall comprise of external & Internal Members)
3. Reserve Bank shall then take a final decision in the case after taking into account the recommendations from the Empowered Committee.

ECB LIABILITY-EQUITY RATIO

For this purpose, **ECB amount will include all outstanding amounts of all ECBs (other than INR denominated) and the proposed ECB (only outstanding ECB amounts in case of refinancing)** while **Equity will include the Paid-up Capital + Free Reserves (Incl. Share Premium received in FC)** as per latest audited Balance Sheet. Both ECB & Equity will be calculated as per Foreign Equity Holder. If there is more than one FE holder in the borrowing Co., the portion of share premium on FC brought in by lender(s) shall only be considered for calculating the ratio.

ALL-IN COSTS

All-in Cost refers to the total 'Expenditure' for raising ECB. It includes Rate of Interest, other fees, expenses, charges, guarantee fee, ECA charges (whether paid in foreign currency or INR) but will not include commitment fee and withholding tax payable in INR. Additionally, for FCCBs, the issue related expenses should not exceed 4% of issue size and in case of Private placement, these expenses should not exceed 2% of the Issue size.

MAXIMUM ALL-IN COSTS: Maximum All-in Costs that can be incurred is as follows:

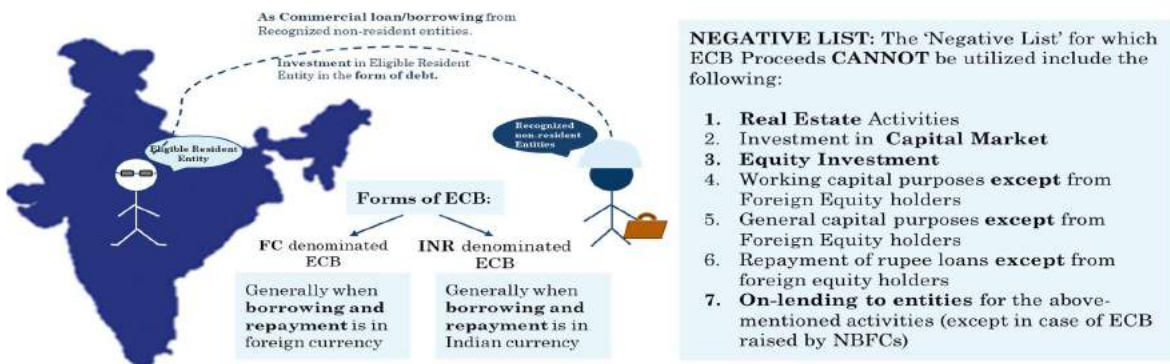
6 months London Interbank Offered Rate (LIBOR) rate + 450 Basis Points (bps)

- **Basis Points refer to a standard base of expressing differences of Interest rates.**
- **One Hundred Basis Points equals One Percent**
- **Hence, 450 Basis Points equals 4.5%**

6 Months LIBOR is defined as '**Benchmark Rate in case of FCY ECB/TC**'. LIBOR rate of different countries or any other 6-month interbank interest rate applicable to the currency of borrowing. Eg. EURIBOR.

Benchmark rate in case of Rupee denominated ECB/TC will be prevailing yield of the Government of India securities of corresponding maturity.

❖ ECB FRAMEWORK:



FORMS OF EXTERNAL COMMERCIAL BORROWINGS:

In case of FC denominated ECB: (i) Bonds, (ii) Bank Loans, (iii) Debentures (other than Compulsory Convertible Instruments), (iv) Trade Credits beyond 3 years, (v) FCCBs, (vi) FCEBs and (vii) Financial Lease.

In case of INR denominated ECB: (i), (ii), (iii), (iv), (vii) as above and Plain Vanilla Rupee denominated bonds issued overseas which can either be placed privately or listed on stock exchanges as per host country regulations.



ELIGIBLE RESIDENT ENTITY.

- All Entities eligible to receive FDI.

Further, the following entities are also eligible to raise ECB:

1. Port Trusts;
2. Units in Special Economic Zones (SEZ);
3. Small Industries Development Bank of India (SIDBI);
4. Export-Import Bank (EXIM Bank) and
5. Registered Entities engaged in Micro-finance activities viz. Registered not for profit Companies, Registered societies/ Trusts/ Co-operative and Non-Government Organizations.



RECOGNIZED

NON-RESIDENT ENTITY.

- Recognized lenders shall mandatorily be members of the FATF or IOSCO compliant country (including on transfer of ECB)

Further, the following entities are also considered as recognized lenders:

1. Multilateral and Regional Financial Institutions where India is a member country.
2. Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds / debentures listed abroad. and
3. Foreign branches / subsidiaries of Indian Banks are permitted as recognized lenders only for FCY ECB (except FCCB & 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.

❖ IOSCO Compliant Countries

IOSCO Committees:

Presidents Committee

The Presidents Committee comprises all the Presidents (Chairs) of ordinary and associate members and meets once a year during the Annual Conference.

The IOSCO Board

The IOSCO Board is the governing and standard-setting body of the International Organization of Securities Commissions (IOSCO) and is currently made up of 33 securities regulators. Mr. Ashley Alder, the Chief Executive Officer of the Securities and Futures Commission (SFC) of Hong Kong, is the Chair of the IOSCO Board. The members of the IOSCO Board are currently the securities regulatory authorities of Argentina, Australia, Bahamas, Belgium, Brazil, China, Egypt, France, Germany, Hong Kong, India, Ireland, Italy, Japan, Korea, Malaysia, Mexico, Morocco, Nigeria, Ontario, Pakistan, Portugal, Quebec, Russia, Saudi Arabia, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States of America (both the U.S. Commodity Futures Trading Commission and U.S. Securities and Exchange Commission). The Chair of the European Securities and Markets Authority and the Chair of IOSCO's Affiliate Members Consultative Committee are also observers.

MINIMUM AVERAGE MATURITY PERIOD (MAMP)

MAMP refers to the weighted average of all disbursements taking each disbursement individually and its period of retention by the borrower for the purpose of External Commercial Borrowings:

| Category | MAMP |
|--|----------|
| 1. ECB raised by MANUFACTURING COMPANIES up to USD 50 Million or its equivalent per FY | 1 Year |
| 2. ECB raised from FOREIGN EQUITY HOLDER for Working Capital purposes, general corporate purposes or for repayment of Rupee Loans | 5 Years |
| 3. ECB raised for (i) Working Capital purposes or General Corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes | 10 Years |
| 4. ECB raised for (i) Repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose | 7 Years |
| 5. ECB raised for (i) Repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purposes | 10 Years |

For the categories mentioned at 2. to 5. above:

- ECB **CANNOT be raised** from Foreign Branches/ Subsidiaries of Indian Banks.
- The prescribed MAMP will have to be strictly complied with under all circumstances.

FCY Denominated ECB (Track I & Track II)

EXCHANGE RATE

Change from FCY ECB into INR ECB can be at the exchange rate prevailing on the date of agreement. It can be less than such exchange rate if consented to, by the ECB Lender

HEDGING PROVISION

The Entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator w.r.t. Foreign currency exposure.

(Eg: Infrastructure Space Companies shall mandatorily hedge 70% of their ECB exposure in case the average maturity of the ECB is less than 5 Years.

CHANGE IN CURRENCY OF BORROWING

Change in Currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as INR is **freely permitted**

INR Denominated ECB (Track III)

EXCHANGE RATE

For conversion to Rupee (INR), the exchange rate shall be the rate prevailing on the date of Settlement.

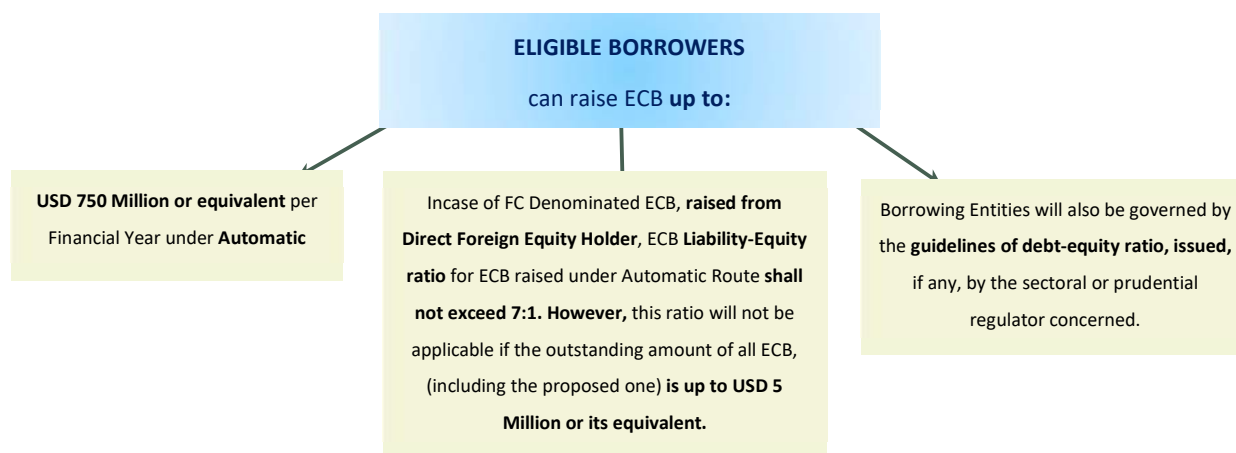
HEDGING PROVISION

Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category-1 Banks in India. Investors can also access the domestic market through branches/subsidiaries of Indian Banks abroad or branches of foreign banks with Indian presence on a back-to-back basis.

CHANGE IN CURRENCY OF BORROWING

Change in Currency from INR to any freely convertible foreign currency is **not permitted**

❖ Limits & Leverage under ECB



Issuance of Guarantee etc. by Indian Banks & Financial Institutions

Issuance of any type of Guarantee by Indian Banks, All India Financial Institutions and NBFCs relating to ECB is **NOT PERMITTED**. Further, Financial Intermediaries (viz. Indian Banks, All India Financial Institutions or NBFCs) shall **NOT INVEST** in FCCBs / FCEBs in any manner, whatsoever.

❖ Parking of ECB Proceeds

Parking of ECB Proceeds Abroad

ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilization. Till utilization, 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) **Deposit with foreign 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-1 banks in India for a **maximum period of 12 months cumulatively**.

These term deposits should be kept in **unencumbered position**.

* To provide relief to ECB borrowers affected by the Covid-19 Pandemic, as a **ONE-TIME measure**, with effect from **April 07th, 2021**, **unutilized ECB proceeds drawn down on or before March 01st, 2020 CAN BE PARKED** in term deposits with AD Category-1 Banks in India prospectively, for an **additional period up to March 01st, 2022**.

Procedure for raising ECB

AUTOMATIC ROUTE

All External Commercial Borrowings can be raised under the automatic if they conform to the parameters prescribed under the ECB Framework issued by the Reserve Bank of India.

Further, the borrowers may approach to an AD Category-1 Bank with their proposal along with a duly filled Form ECB.

APPROVAL ROUTE

1. Borrower may approach the RBI with an Application in Form ECB for examination through their AD Category-1 Bank.
2. ECB proposals received by RBI would then be placed before the Empowered Committee set up by RBI.
3. Empowered Committee will have external as well as internal members and RBI will take FINAL DECISION after taking into account recommendations of the Empowered Committee

REPORTING REQUIREMENTS under ECB

Loan Registration Number (LRN)

Changes in Terms & Conditions of ECB

Monthly Reporting of Actual Transactions

Late Submission Fee (LSF) for delay in Reporting

Standard Operating Procedure (SOP) for Untraceable Entities

I. Loan Registration Number (LRN)

- Any draw-down in respect of an ECB should only take place after obtaining the **Loan Registration Number (LRN)** from Reserve Bank of India.
- To obtain LRN, **borrowers are required to submit duly certified Form ECB**, which also contains the Terms & Conditions of ECB.
- **Duly certified Form ECB shall be prepared in duplicate and submitted** to the designated AD Category-1 Bank.
- In turn, the **AD Category-1 Bank will forward one copy to the Director, RBI-DSIM, ECB Division, Mumbai.**
- **Note: Copies of Loan Agreement for raising ECB are not required to be submitted to the Reserve Bank.**

II. Changes in TERMS & CONDITIONS OF ECB

- Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the Department of Statistics & Information Management (DSIM) through **revised form ECB at the earliest, in any case not later than 7 days from the changes effected.**
- **While submitting revised Form ECB, the changes should be specifically mentioned in the communication**

III. MONTHLY REPORTING of Actual Transactions

- The borrowers are required to report actual External Commercial Borrowings (ECB) transactions through Form ECB-2 Return through the AD Category-1 Bank on monthly basis so as to reach Department of Statistics & Information Management (DSIM) **within 7 working days from the close of the month to which it relates.**
- **Changes, if any, in ECB parameters should also be incorporated in Form ECB-2 Return.**

IV. LATE SUBMISSION FEE (LSF) for delay in Reporting

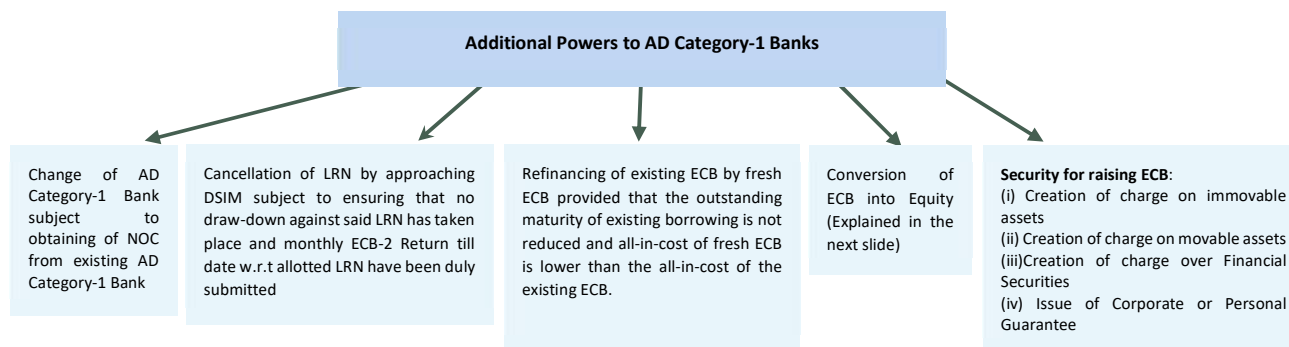
- Any borrower, who is otherwise in compliance of ECB guidelines, can regularize the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix.

| S.No | Type of Return / Form | Period of Delay | Applicable LSF |
|------|-----------------------|---|-----------------------|
| 1 | Form ECB-2 | Upto 30 calendar days from due date of submission | INR 5,000 |
| 2 | Form ECB-2 / ECB | Upto 3 years from due date of submission / date of drawdown | INR 50,000 per year |
| 3 | Form ECB-2 / ECB | Beyond 3 years from due date of submission / date of drawdown | INR 1,00,000 per year |

- Borrower through its AD Bank, may pay the LSF by way of Demand Draft in favour of RBI or any other mode specified by the Reserve Bank.
- Such payment should be accompanied with the requisite returns. Form ECB & ECB-2 returns reporting contraventions will be treated separately non-payment of LSF would result in contravention of reporting provisions and shall be subject to compounding or adjudication as provided in FEMA, 1999 or regulations/rules framed thereunder

Powers delegated to AD Category-1 Banks

Designated AD Category-1 Banks can **approve ANY requests from the borrowers** for changes in respect of ECB (except for FCCB/FCEB), duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s).

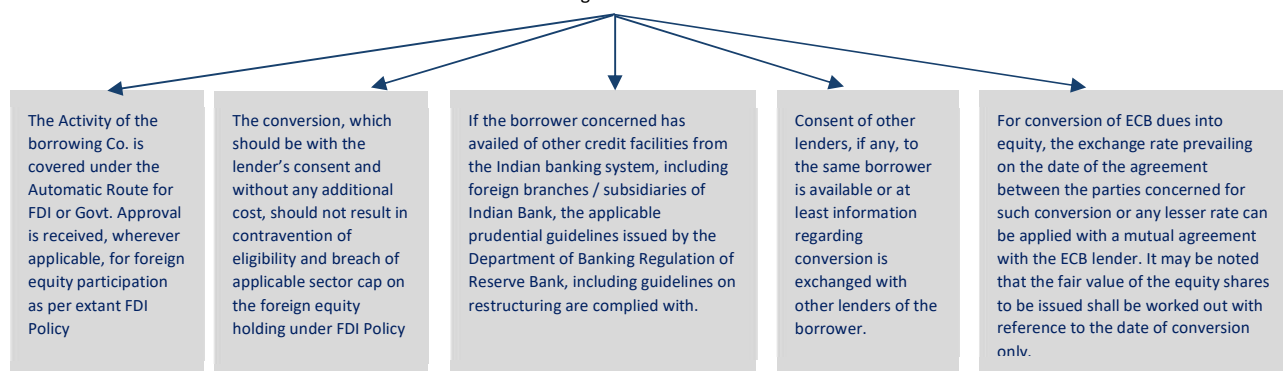


Additional Requirements:

1. Changes permitted are in conformity with the applicable ceilings / guidelines and the ECB continues to be in compliance with applicable guidelines.
2. Ensure that if ECB borrower has availed credit facilities from Indian Banking system, including foreign branches/subsidiaries of Indian Banks, any extension of tenure of ECB shall be subject to applicable guidelines issued by RBI
3. Changes w.r.t T&C of ECB allowed by AD under RBI power should be reported to DSIM. These changes should also reflect in Form ECB-2 returns appropriately.

Conversion of ECB into Equity

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following **CONDITIONS**:



❖ **ECB Facility for Start-ups:**

| | |
|---|--|
| Eligibility | ✓ Entity recognized as Start-up by Central Government as on date of raising ECB |
| Maturity | ✓ Minimum Average Maturity Period (MAMP) will be 3 years. |
| Recognized Lender | ✓ Lender shall be a resident of FATF Compliant Country. |
| Forms | ✓ in the form of loans or non-convertible, optionally convertible or partially convertible preference shares. |
| Currency | ✓ Borrowing to be denominated in any FC or INR or a combination thereof. |
| Amount | ✓ Borrowing PER START-UP will be limited to USD 3 Million or equivalent per FY either in INR or any convertible foreign currency or a combination of both. |
| All-in-Cost | ✓ As mutually agreed between Borrower & Lender. |
| End uses | ✓ For any expenditure in connection with the business of the borrower. |
| Conversion into Equity | ✓ Conversion is freely permitted subject to Regulations applicable for Foreign investment in Start-ups |
| Security | ✓ The choice of security to be provided is left to the borrowing entity. Further, issuance of corporate or personal guarantee is allowed. ✓ Guarantee issued by a NR is allowed only if such parties qualify as lender under ECB for Start-ups. |
| Provisions on leverage ratio and ECB liability: | ✓ Not Applicable |

Compliance Calendar

| INCOME TAX | | | | |
|---|--|------------------------------|-----------------|------------------------------|
| Compliance details | Applicability | Reporting period | Due Date | Form |
| Deposit of Tax Deducted | Non-government deductors | June, 2021 | 7th July, 2021 | Challan 281 |
| Issue of TDS certificate u/s 194IA, 194IB and 194M | All deductors | May, 2021 | 15th July, 2021 | Form 16B & 16C |
| Quarterly statement of TCS Deposited | TCS Collectors | April to June, 2021 | 15th July, 2021 | Form 27EQ |
| Quarterly statement of TDS Deducted | TDS deductors | Jan to Mar, 2021 | 31st May, 2021 | Form 24Q, 26Q & 27Q |
| Issue of TDS Certificates | TDS deductors | Jan to Mar, 2021 | 15th June, 2021 | Form 16 |
| Challan-cum-statement for TDS u/s 194IA, 194IB and 194M | All deductors | June, 2021 | 30th July, 2021 | Form 26QB & 26QC |
| Issue of TCS Certificates | TCS collectors | 1st April to 30th June, 2021 | 30th July, 2021 | Form 27D |
| Equalization Levy statement | Equalization levy deductors | F.Y.2020-21 | 30th June, 2021 | Form 1 |
| Quarterly statement of TDS deposited | All deductors | 1st April to 30th June, 2021 | 31st July, 2021 | Form 27Q, 26Q & 24Q |
| Income Tax Return Filing | All taxpayers other than companies or those not liable for a tax audit | F.Y. 2020-21 | 31st July, 2021 | ITR-5 |
| Monthly Return for Profession Tax more than 50,000/- | Entities registered with PT Authorities | June, 2021 | 31st July, 2021 | Through State-Wise PT Portal |

| GST | | | | |
|---|--|-------------------------|-----------------|-------------|
| Compliance details | Applicability | Reporting period | Due Date | Form |
| Return of outward supplies of taxable goods and/or services | GST Taxpayers who have not opted for QRMP scheme | June, 2021 | 11th July, 2021 | GSTR 1 |
| Return of outward supplies of taxable goods and/or services | GST Taxpayers who opted for QRMP scheme | June, 2021 | 13th July, 2021 | GSTR 1 |
| Summary Return of Outward and Inward Supplies along with payment of Tax | GST Taxpayers who have not opted for QRMP scheme | June, 2021 | 20th July, 2021 | GSTR 3/3B |
| Summary Return of Outward and Inward Supplies along with payment of Tax | GST Taxpayers who opted for QRMP scheme | June, 2021 | 22nd July, 2021 | GSTR 3/3B |
| Return for Details of Supplies and the amount of tax collector | E-commerce Operator | June, 2021 | 10th July, 2021 | GSTR 8 |
| Return for TDS under GST | Government Authorities | June, 2021 | 10th July, 2021 | GSTR 7 |
| Return for details of ITC received and distribution | Input Service Distributors | June, 2021 | 13th July, 2021 | GSTR 6 |
| Return for details of Inward and Outward Supplies | Dealer opted for Composition Scheme | Apr to Jun, 2021 | 18th July, 2021 | GSTR 4 |
| Summary Return of Outward taxable supplies and tax payable | GST Taxpayers | June, 2021 | 20th July, 2021 | GSTR 5 & 5A |
| Return for details of goods and services purchased in India | Taxpayer claiming Refund & having UIN | June, 2021 | 28th July, 2021 | GSTR-11 |

| Companies Act, LLP and FEMA | | | | |
|---|--|--|------------------|---------------------------------------|
| Compliance details | Applicability | Reporting period | Due Date | Form |
| Filing of Forms under MCA's General Circular No. 11/2021, Including Form PAS-6 and other forms, without additional fees | All Companies & LLP | Any forms, which are due for filing between 1st April 21 to 31st July 21 | 31st August 2021 | List of Forms specified by MCA - Link |
| Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA | all categories of ECB | June, 2021 | 7th July, 2021 | ECB-2 Return |
| Annual Return on Foreign Liabilities and Assets under FEMA | All resident Companies and LLPs which have received FDI / made ODI | F.Y.2020-21 | 15th July, 2021 | FLA Return |

SEBI (LODR) Regulations

| Compliance details | Applicability | Reporting period | Due Date | Form |
|---|--|--------------------------------|-----------------|---|
| Quatrely Compliance Report on Corporate Governance. | It shall not apply, in respect of - (a) the listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty five crore, as on the last day of the previous financial year: (b) the listed entity which has listed its specified securities on the SME Exchange. | 1st April, 2021-30th June 2021 | 21st July 2021 | Regulation 27 (2) of SEBI LODR |
| Statement of Investor complaints. | All Listed Entity | 1st April, 2021-30th June 2021 | 21st July 2021 | Regulation 13 (3) of SEBI LODR |
| a statement showing holding of securities and shareholding pattern separately for each class of securities. | All Listed Entity Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty-one days from the end of each half year. | 1st April, 2021-30th June 2021 | 21st July 2021 | Regulation 31 of SEBI LODR |
| Submit Reconciliation of Share Capital Audit Report on a quarterly basis to the stock exchanges audited by a qualified chartered accountant or a practicing company secretary | All Listed Entity | 1st April, 2021-30th June 2021 | 30th July, 2021 | Regulation 76 of Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 |

Labour Laws

| Compliance details | Applicability | Reporting period | Due Date | Form |
|---|---|------------------------------|-----------------|-------------|
| Deposit of Provident Fund Contributions | Entities registered with PF Authorities | June, 2021 | 15th July, 2021 | Monthly ECR |
| EDLI Return (Employees Deposit Linked Insurance) | All companies and firm deducting PF | June, 2021 | 25th July, 2021 | |
| Deposit of E.S.I.C Contributions | Entities registered with ESIC Authorities | June, 2021 | 15th July, 2021 | Monthly ECR |
| Rule 14(3): Contracts of Apprenticeship Training by the establishment shall be forwarded to Regional Director or State Apprenticeship Advisor | For the apprentices engaged | 16th April to 15th July 2021 | 31st July, 2021 | Form App-4 |
| Rule 33: Quarterly Return by employer having ten or more employees to the inspector | | 1st April to 30th June, 2021 | 10th July, 2021 | Form XXVII |