

RBI issues External Commercial Borrowings (ECB) guidelines for Startups

The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to the announcement made by the Reserve Bank in the Fourth Bi-monthly Monetary Policy Statement for the year 2016-17 released on October 04, 2016, for permitting Startup enterprises to access loans under ECB framework. Parameters for considering an entity as a Startup have since been published in the Official Gazette on February 18, 2016 by the Government of India. It is therefore decided, in consultation with the Government of India to permit AD Category-I banks to allow Startups to raise ECB under the following framework:

- a. **Eligibility:** An entity recognised as a Startup by the Central Government as on date of raising ECB.
- b. **Maturity:** Minimum average maturity period will be 3 years.
- c. **Recognised lender:** Lender / investor shall be a resident of a country who is either a member of Financial Action Task Force (FATF) or a member of a FATF-Style Regional Bodies; and shall not be from a country identified in the public statement of the FATF as:
 - A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies

Exclusion: Overseas branches/subsidiaries of Indian banks and overseas wholly owned subsidiary / joint venture of an Indian company will, however, not be considered as recognized lenders under this framework.

- d. **Forms:** The borrowing can be in the form of loans or non-convertible, optionally convertible or partially convertible preference shares. The funds should come from a country which fulfils the conditions at 2 (c) above.
- e. **Currency:** The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non-resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.
- f. **Amount:** The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.
- g. **All-in-cost:** Shall be mutually agreed between the borrower and the lender.

h. **End-uses:** For any expenditure in connection with the business of the borrower.

i. **Conversion into equity:** Conversion into equity is freely permitted, subject to Regulations applicable for foreign investment in Startups.

j. **Security:** The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc., and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities.

k. **Corporate and personal guarantee:** Issuance of corporate or personal guarantee is allowed. Guarantee issued by non-resident(s) is allowed only if such parties qualify as lender.

Exclusion: Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.

l. **Hedging:** The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.

m. **Conversion rate:** In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.

Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework announced vide A.P. (DIR Series) Circular No. 32 dated November 30, 2015. However, provisions on leverage ratio and ECB liability: Equity ratio will not be applicable. It may be noted that Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECBs.

Please contact for any query related to this mail to Ms. Surbhi Sharma, Sr. Research Officer at surbhi@phdcci.in with a cc to Dr. S P Sharma, Chief Economist, PHD Chamber of Commerce & Industry.

Warm regards,

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