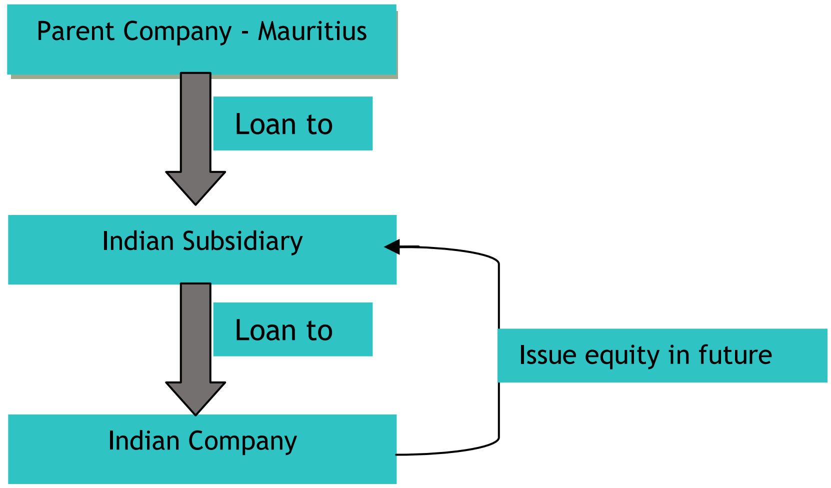
NPV & ASSOCIATES
Chartered Accountants

REGULATIONS RELATING TO ECB

- CA. MILAN CHITALIA

CASE STORY:



PROVISIONS / CONDITIONS:

Following are the basic provisions under Indian regulations in relation to External Commercial Borrowings. Detailed provisions will be conveyed once the above clarifications are provided:

External Commercial Borrowings (ECBs) – are commercial loans raised by eligible resident entities from recognized non-resident entities and should confirm to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling etc. The parameters apply in totality and not on a standalone basis. The framework for raising loans through ECB comprises of the following 3 tracks:

Particulars	Track I	Track II	Track III
Scope:	Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years	Long term foreign currency denominated ECB with minimum average maturity of 10 years	Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years
Minimum Average Maturity Period:	i. 3 years for ECB upto USD 50 million or its equivalent. ii. 5 years for ECB beyond USD 50 million or its equivalent. iii. 5 years for eligible borrowers under para 2.4.2.vi, irrespective of the amount of borrowing. iv. 5 years for Foreign Currency Convertible Bonds (FCCBs)/ Foreign Currency Exchangeable Bonds (FCEBs) irrespective of the	10 years irrespective of the amount.	Same as under Track I.

	amount of borrowing. The call and put option, if any, for FCCBs shall not be exercisable prior to 5 years.		
Eligible Borrowers:	i. Companies in manufacturing and software development sectors. ii. Shipping and airlines companies. iii. Small Industries Development Bank of India (SIDBI). iv. Units in Special Economic Zones (SEZs). v. Export Import Bank of India (Exim Bank) (only under the approval route). vi. **Companies in infrastructure sector,** Non- Banking Financial Companies Infrastructure Finance Companies (NBFC-IFCs), NBFCs- Asset Finance Companies (NBFC-AFCs), Holding Companies and Core Investment Companies (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.	i. All entities listed under Track I. ii. Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) coming under the regulatory framework of the Securities and Exchange Board of India (SEBI).	i. All entities listed under Track II. ii. All Non-Banking Financial Companies (NBFCs) coming under the regulatory purview of the Reserve Bank. iii. NBFCs-Micro Finance Institutions (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 Statelevel Cooperative Acts/Multilevel Cooperative Act/State-level mutually aided Cooperative Acts respectively), Non- Government Organizations (NGOs) which are engaged in micro finance activities. iv. Companies engaged in miscellaneous services viz. research and development (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 Special Economic Zones (SEZs)/ National Manufacturing and Investment Zones (NMIZs).
Eligible Lenders:	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	**All entities listed under Track I** but for overseas branches / subsidiaries of Indian banks	**All entities listed under Track I** but for 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

	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		

NOTE 1: End use of Funds prescriptions:

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).

Note 2: Approval Route Or Automatic Route: **Individual Limits:** The individual limits refer to the amount of ECB which can be raised in a financial year **under the automatic route**.

i. 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; and
d. Up to USD 500 million or equivalent for remaining entities.

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.

For the purpose of ECB liability: equity ratio, the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet can be reckoned for calculating the 'equity' of the foreign equity holder. Where there are more than one foreign equity holders in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ratio.

Note 3: The following sectors will qualify as infrastructure sectors, namely, (Substituted by the FEM (Borrowing or Lending in Foreign Exchange) (Third Amendment) Regulations, 2013, w.e f. 19-7-2013)

(a) Energy which will include (i) electricity generation, (ii) electricity transmission, (iii) electricity distribution, (iv) oil pipelines, (v) oil/gas /liquefied natural gas (LNG) storage facility (includes strategic storage of crude oil) and (vi) gas pipelines (includes city gas distribution network);

(b) Communication which will include (i) mobile telephony services /companies providing cellular services, (ii) fixed network telecommunication (includes optic fibre/cable networks which provide broadband/internet) and (iii) telecommunication towers;

(c) Transport which will include (i) railways (railway track, tunnel, viaduct, bridges and includes supporting terminal infrastructure such as loading/ unloading terminals, stations and buildings), (ii) roads and bridges, (iii) ports, (iv) inland waterways, (v) airport and (vi) urban public transport (except rolling stock in case of urban road transport);

(d) Water and sanitation which will include (i) water supply pipelines, (ii) solid waste management, (iii) water treatment plants, (iv) sewage projects (sewage collection, treatment and disposal system), (v) irrigation (dams, channels, embankments, etc.) and (vi) storm water drainage system;

(e) (i) mining, (ii) exploration and (iii) refining;

(f) Social and commercial infrastructure which will include (i) hospitals (capital stock and includes medical colleges and para medical training institutes), (ii) Hotel Sector which will include hotels with fixed capital investment of Rs. 200 crore and above, convention centres with fixed capital investment of Rs. 300 crore and above and three star or higher category classified hotels located outside cities with population of more than 1 million (fixed capital investment is excluding of land value), (iii) common infrastructure for industrial parks, SEZs, tourism facilities, (iv) fertilizer (capital investment), (v) post harvest storage infrastructure for agriculture and horticulture produce including cold storage, (vi) soil testing laboratories and (vii) cold chain (includes cold room facility for farm level pre-cooling, for preservation or storage or agriculture and allied produce, marine products and meat;

(g) Any other sectors as prescribed by the Reserve Bank in consultation with Government of India;

Note 4: Foreign Equity Holders:

The term 'Foreign Equity Holder' means (a) direct foreign equity holder with minimum 25% direct equity holding by the lender in the borrowing entity, (b) indirect equity holder with minimum indirect equity holding of 51%, and (c) group company with common overseas parent.