

*De Jure*

*April 25, 2019*

## New ECB Framework – Guidelines Simplified!



With the objective of promoting ease of doing business in India, the Reserve Bank of India ("**RBI**") has simplified and liberalised the erstwhile framework on external commercial borrowings/foreign currency denominated loans ("**ECB**") and the rupee denominated loans by notifying the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 ("**ECB Regulations**"), on December 17, 2018. The ECB Regulations have repealed the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, and the Foreign Exchange Management (Borrowing or Lending in Rupees) Regulations, 2000 (collectively the "**Erstwhile Framework**").

The ECB Regulations together with the RBI circulars dated January 16, 2019 and February 7, 2019, and the Master Directions on External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019, issued by RBI constitute the new framework on ECBs and the rupee denominated loans ("**New ECB Framework**") and has been made effective from January 16, 2019.

Tabulated below is a comparative analysis of certain ECB parameters under the Erstwhile Framework vis-à-vis the New ECB Framework:

<i>Parameter</i>	<i>Erstwhile framework</i>	<i>New ECB framework</i>
ECB Classification	<p>ECBs were classified into three categories:</p> <ul style="list-style-type: none"> <li>Track I – foreign currency denominated ECB with a maturity of 3 years;</li> <li>Track II - foreign currency denominated ECB with a maturity of 5 years;</li> <li>Track III - Rupee denominated bonds with a maturity of 3 to 5 years.</li> </ul>	<p>The track categorisations have been dispensed with and ECBs have now been classified into two categories viz. foreign currency denominated ECBs ("<b>FCY denominated ECB</b>") and Indian rupee dominated ECBs ("<b>INR denominated ECB</b>") including the Rupee denominated bonds, popularly termed as the '<i>Masala Bonds</i>'.</p>
Eligible Borrower	<p>ECBs could be availed only by entities which met the criteria of Tracks I, II and III as set out under</p>	<p>The eligibility criteria of a borrower are now liberalised. In addition to certain specific entities that were eligible borrowers under the</p>

<i>Parameter</i>	<i>Erstwhile framework</i>	<i>New ECB framework</i>
	the Erstwhile Framework.	Erstwhile ECB Framework, all entities eligible to receive foreign direct investments <sup>1</sup> are now eligible to avail ECBs.
Recognised Lenders	The lenders were also classified into three tracks under the Erstwhile Framework.	The track categorisations have been dispensed with. Entities which are resident of Financial Action Task Force or International Organization of Securities Commission compliant countries are recognised as lenders for extending ECB facility to eligible borrowers.
ECB Limit and Leverage	Specified limits were prescribed for ECBs based on the sector or the activity in which the proposed eligible borrower was engaged.	The maximum amount of ECB that can be availed by an eligible borrower under automatic route is USD 750 million or INR equivalent in a financial year.  Guidelines issued by the sectoral or prudential regulator in relation to debt equity ratio are also required to be complied by the eligible borrower.
Minimum average maturity period	A three-track categorisation was prescribed for the minimum average maturity period.	The track categorisation has been dispensed with and a minimum average maturity period of three years has now been prescribed for ECBs.
Prescribed form for reporting ECB	Form 83	Form 83 has now been replaced with Form ECB. Form ECB is required to be submitted by the eligible borrowers for obtaining a loan registration number and for intimating RBI of any changes in the terms of the ECBs already availed.

<sup>1</sup> Under the Foreign Exchange Management (Transfer or Issue of a Security by a Person Resident Outside India) Regulations, 2017

<i>Parameter</i>	<i>Erstwhile framework</i>	<i>New ECB framework</i>
Late submission fee for delay in reporting	-	Late submission fee matrix has been introduced, providing an opportunity to the borrowers to regularise minor delays including delay in reporting the drawdown of ECB proceeds before obtaining the LRN or delay in submitting Form ECB.
End use restriction	<p>Following activities were included in the negative list for which ECBs could not be utilised:</p> <ul style="list-style-type: none"> <li>• real estate activities;</li> <li>• investment in capital market;</li> <li>• equity investment;</li> <li>• working capital requirements, general corporate purposes or repayment of Rupee loans<sup>2</sup>;</li> <li>• on-lending to other entities for any of the above activities.</li> </ul>	While the end use restrictions remain the same, definition of the term ' <i>real estate activities</i> ' has been introduced.
Route for Rupee denominated bonds issued overseas	Approval Route - Issuance of these bonds required a prior approval of RBI, the request for which was required to be submitted through the authorised dealer bank.	Automatic Route - Issuance of these bonds is under automatic route since the same is now subsumed by the INR denominated ECB.

<sup>2</sup> Except in case of ECBs availed from direct and indirect foreign equity holder or group companies and where the minimum average maturity period is 5 years

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## OUR VIEW



Dispensation of the track categorisation is a welcome change and should significantly simplify the process of ascertaining the criteria for availing ECBs, thereby providing an impetus to the debt funding route through ECBs for the Indian industry. Further, considering that the ECB facility can be availed by all entities who are eligible to receive FDI, certain entities which could not have otherwise availed ECBs under the Erstwhile Framework have now become eligible to avail ECBs.

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