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EXTERNAL COMMERCIAL BORROWINGS: END USES RELAXED FURTHER

2 August 2019

In view of stakeholder comments and in order to provide a diverse source of funds, reduce stress and ease the liquidity crisis for corporates in certain sectors, the Reserve Bank of India (RBI) has relaxed the restrictions relating to external commercial borrowings (ECB) *vide* its press release 2019-2020/285 dated 30 July 2019 and Circular RBI/2019-20/20 A.P. (DIR Series) Circular No. 04 (Circular).

Pre-Circular Position on End Use of ECBs

The ECB framework was overhauled by a circular dated 16 January 2019 (as updated in the Master Direction on External Commercial Borrowings, Trade Credits and Structured Obligations dated 26 March 2019 (RBI/ FED/2018-19/67) (ECB Master Directions)) in view of the fifth bi-monthly monetary policy dated 5 December 2018. The revised framework has merged the three tracks, expanded the list of eligible borrowers and lenders and removed the prescriptive list of end-uses and introduced a unified negative list for both rupee denominated and foreign currency denominated ECBs. ECB proceeds could not earlier be utilised for (a) real estate activities; (b) investment in capital market; (c) equity investment; (d) working capital purposes except from foreign equity holders; (e) general corporate purposes except from foreign equity holders; (f) repayment of rupee loans except from foreign equity holder; and (g) on-lending to entities for the above activities. Further, lenders other than foreign equity holders were not permitted to lend in foreign currency for working capital, general corporate purposes and repayment of Rupee loans.

Salient Features of the New Regime

The Circular has further rationalised the end-use provisions for ECBs from recognised lenders (including non-foreign equity holder lenders), except foreign branches / overseas subsidiaries of Indian banks as follows:

MINIMUM AVERAGE MATURITY (MAM)	END USE PERMITTED
For ECBs with MAM >= 10 years	▪ Working capital ▪ Repayment of rupee loans onshore (not originally obtained for capital expenditure)

	▪ General corporate purposes ▪ For non-banking finance companies (NBFC) borrowers, on-lending for the above purposes
For ECBs with MAM >= 7 years	▪ Repayment of rupees loans onshore (initially obtained for capital expenditure) ▪ For NBFC borrowers, on-lending for the above purpose ▪ Repayment of rupee loans (obtained for capital expenditure in manufacturing and infrastructure sector) under one-time settlement (OTS) to domestic lenders for borrowers classified as SMA-2 or NPA

ECBs for Working Capital and General Corporate Purposes: Under the erstwhile regime, only foreign equity holders were permitted to lend through ECBs to their direct and indirect Indian joint ventures or subsidiaries for repayment of their rupee loans and general corporate purposes for a MAM of 5 years provided the ECB liability-equity ratio did not exceed 7:1. The Circular now allows all recognised lenders to lend to eligible borrowers that seek to avail ECB for working capital and general corporate purposes subject to a MAM of 10 years. However, foreign branches / overseas subsidiaries of Indian banks are still restricted from lending through the ECB route for these purposes. Further NBFC borrowers have also been permitted to on-lend for these purposes subject to compliance with a MAM of 10 years. The Circular has made it possible for Indian companies, especially NBFCs to borrow money through this route for on-lending.

ECBs for Repayment of Domestic Debt: Under the erstwhile regime, only foreign equity holders were permitted to lend for repayment of rupee loans under the ECB route subject to a MAM of 5 years and leverage ratio being met. This requirement has now been relaxed. The Circular now allows eligible borrowers to borrow ECBs from any recognised lender (in addition to foreign equity holders) proceeds of which can be used for the repayment of rupee loans (obtained for capital expenditure) that have been availed domestically for capital expenditure for a MAM of 7 years. Further, NBFC borrowers have been permitted to borrow ECBs from any eligible lender for on-lending for this purpose subject to compliance with a MAM of 7 years.

However, the utilisation of ECB proceeds for repayment of rupee loans availed domestically for any purposes other than capital expenditure and for on-lending by NBFCs for the same, shall be subject to a MAM of 10 years.

Foreign branches / overseas subsidiaries of Indian banks are not permitted to extend ECBs for repayment of domestic rupee denominated loans.

ECBs for Repayment of Domestic Loans of Stressed Borrower Companies: The Circular has also permitted eligible borrowers to avail ECBs for the repayment of rupee loans availed domestically for capital expenditure in the manufacturing and infrastructure sector that have been classified as SMA-2 (i.e. principal or interest overdue between 61-90 days) or NPA (i.e. principal or interest overdue for more than 90 days), under an one-time settlement arrangement with the existing lenders. This is subject to compliance with the all-in-cost, minimum average maturity period and other provisions of the ECB Master Directions. Lender banks are also permitted to sell such loans, through assignment, to recognised lenders. However, such assignment of loans shall not be made to foreign branches / overseas subsidiaries of Indian banks.

While this liberalisation has permitted overseas investors to buy the direct loan exposures of Indian corporates and has the potential to reduce the stress on both the debtor and the existing lenders, it may lead to eligible borrowers directly entering into one time settlements, thereby reducing the scope of activities for asset reconstruction companies.

Observations

The Circular is a step forward towards easing the end use restrictions and giving access to foreign funds for repayment of rupee debt, working capital and general corporate purposes to Indian corporates which have historically been restricted under the ECB regime from persons other than foreign shareholders. It also opens up an avenue for defaulting Indian corporates to access foreign funds for repayment of its domestic debt given that domestic funding is constrained due to stress in the banking system and current liquidity crisis from sources other than their offshore foreign shareholders. It goes on to show that the regulator is looking at averting the crisis in India's shadow banking sector, to enable NBFCs to both borrow from foreign sources and use it for its on-lending activities in an attempt to insulate them from situations where liquidity dries up due to sudden domestic market volatility and current stress in this sector.

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