

Towards a new era: RBI's transformative amendments to India's External Commercial Borrowings landscape

20 February 2026

Background

On the heels of the review initiated by the Reserve Bank of India (RBI) of the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 (Erstwhile Regulations) in October 2025 (which was analysed by us in an earlier [ERGO](#)) and after taking into account the feedback received from industry participants and other stakeholders, the RBI has now notified the [Foreign Exchange Management \(Borrowing and Lending\) \(First Amendment\) Regulations, 2026](#) (Revised Regulations) (published in the official gazette on 16 February 2026) aiming to significantly simplify the existing external commercial borrowings (ECB) framework to align it with some of the other advanced economies in the world and to meet the funding requirements of the Indian corporates. This marks a significant step towards modernizing and liberalising the existing ECB regime. The timing of the Revised Regulations is critical as it coincides with the introduction of RBI's acquisition financing framework for Indian banks, indicating an overall shift in RBI's approach in regulating debt transactions in India.

We have analysed below the manner in which the Revised Regulations reshape key aspects of the erstwhile ECB framework and set out a few practical considerations for borrowers and lenders. For a detailed comparison of the Erstwhile Regulations and the Revised Regulations, please refer to the **Annexure** below.

1. Prospective application

The amendments have prospective application only and existing ECBs will continue to be governed by the old regime. However, reporting for both existing and fresh ECBs will be in accordance with the new timelines under the Revised Regulations.

2. Broader pool of eligible borrowers

- Eligible borrowers now include any person resident in India that is incorporated under a Central or State Act (other than individuals) and entities under a restructuring scheme or corporate insolvency resolution process (CIRP) where the plan permits borrowing. The explicit linkage to foreign direct investment eligibility has been removed.
- The suggestions made by various stakeholders to specifically include trusts including real estate investment trusts (REITs) and infrastructure investment trusts (InvITs) as eligible borrowers has not been spelt out and left to interpretation.

3. Expansion of recognised lenders universe

- Recognised lenders now include all persons resident outside India (including individuals and NRIs), overseas branches / subsidiaries of entities whose lending business is regulated by RBI and financial institutions or their branches in International Financial Services Centre (IFSC).
- Specific FATF / IOSCO jurisdictional conditions and special tests for foreign equity holders have been removed.
- Borrowing from related parties on an arm's-length basis has also been permitted.

4. Expanded list of permitted end-uses now include

- Acquisition Financing: Acquisitions of listed or unlisted companies where control is acquired as well as distressed acquisitions under Insolvency and Bankruptcy Code, 2016 (IBC) and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) are permitted. Minority acquisitions without controlling stake remain outside scope.
- Schemes and Reorganisations: Financing of mergers, demergers, amalgamations and schemes of arrangement is permitted.
- Real Estate Business: 'Real estate business' has been defined with several exclusions which were earlier restricted now being permitted, albeit subject to conditions, for e.g., construction-development projects, industrial parks, special economic zones, integrated townships, infrastructure, own-use commercial / residential property and real-estate broking services are permitted.
- Agriculture and Plantation: The earlier blanket prohibition is replaced with specific permitted categories (e.g., controlled-condition cultivation) and limited plantation activities (tea / coffee / rubber, etc.).
- Infrastructure: Activities in the Harmonised Master List are expressly permitted (reinstated from a drafting omission in the Draft Amendments¹).
- On-Lending: Prohibited only for purposes that are themselves restricted; otherwise permitted.

5. Higher borrowing thresholds

Automatic route limit increased to the higher of: (a) outstanding ECB up to USD 1 billion from USD 750 million; or (b) total outstanding borrowing (external and domestic) up to 300% of net worth as per the last standalone audited balance sheet. Entities regulated by a financial sector regulator (RBI / SEBI / IRDAI / PFRDA) are outside this ceiling and remain subject to their prudential norms.

6. Increased flexibility in currency

ECBs may now be raised in any foreign currency or INR and are not restricted to just freely convertible currencies. Borrowers can convert INR-denominated ECBs to foreign currency (which was restricted earlier) and *vice versa*.

7. Market-Aligned Cost Structure

- All-in-cost and prepayment ceilings have been removed. Borrowing cost must align with prevailing market conditions, subject to satisfaction of the designated AD Category-I bank.
- Prepayment / penal charges are also market-linked.

8. Standardized minimum average maturity period (MAMP)

- A uniform 3-year MAMP now applies across borrowers and end-uses, with a calibrated window of 1 - 3 years for manufacturing sector borrowers whose outstanding ECB does not exceed USD 150 million.
- MAMP need not be met in specified scenarios such as conversion of ECB (including Foreign Currency Convertible Bonds / Foreign Currency Exchangeable Bonds) to non-debt instruments, repayment using proceeds of non-debt instruments, permitted refinancing, lender debt-waiver, and closure / merger / acquisition / resolution or liquidation of the lender or the borrower.

9. Simplified Compliance

- Form ECB-2 has moved from monthly to event-based reporting, i.e., within 7 calendar days from the end of the month in which drawdown or debt-servicing occurs.
- Changes to ECB parameters are to be reported in the revised Form ECB-1 within 7 calendar days from the end of the month in which the change took effect.

¹ 'Draft Regulations' means the draft Foreign Exchange Management (Borrowing and Lending) (Fourth Amendment) Regulations, 2025 (Draft Regulations)

10. Refinancing

Eligible borrowers may now refinance an existing ECB (in whole or in part) with a fresh ECB, provided the refinancing does not breach the MAMP applicable to the original ECB.

Market Impact for Stakeholders

Borrowers	Lenders
<ul style="list-style-type: none"> • Group treasury and promoter financing structures become more viable with related-party lending expressly allowed on an arm's-length basis. • Borrowers can now tap offshore debt for acquisition financing, enabling acquirers to fund control and distressed acquisitions through ECBs - unlocking capital for strategic growth. • Real-estate companies gain a meaningful new avenue for leverage, reducing uncertainty and diligence friction in financings. • Refinancing flexibility improves as borrowers can roll over or restructure ECBs without needing a lower all-in-cost, allowing more efficient repricing and extension strategies. • Market-aligned pricing boosts access to private credit, as the removal of all-in-cost caps allows, risk-priced offshore structures. • Manufacturers benefit from shorter MAMP windows, enabling 1 - 3 year tenors for up to USD 150 million outstanding and supporting working capital adjacent needs. • Borrowers gain currency flexibility, with ECBs now permitted in any foreign currency and allowing INR-to-FCY conversions for optimal hedging and investor fit. • CIRP and restructuring-stage companies gain a lifeline, as they can now raise ECBs if the resolution plan permits, creating opportunities for turnaround financing. 	<ul style="list-style-type: none"> • Pricing flexibility increases materially with the removal of all-in-cost caps, allowing lenders to price risk in line with global private credit norms. • Refinancing markets deepen as fresh ECBs no longer need to be cheaper than existing ones, enabling flexible exit and rollover strategies. • Real-estate and infrastructure financing opportunities expand with detailed exclusions permitting construction-development, industrial parks, SEZs and own-use assets. • Acquisition finance opens up as ECBs can now fund control acquisitions and distressed acquisitions under IBC, a major new pipeline for credit providers. • IFSC-based lenders gain a clearer regulatory footing, positioning GIFT City as a more competitive cross-border credit hub. • Guarantee structures become more lender-friendly with cross-border guarantees shifting to a liberalised standalone framework. • Hedging flexibility increases, allowing lenders to negotiate risk-mitigation terms without regulatory conditionalities.

Annexure

Comparative overview

S. No.	Erstwhile Regulations	Revised Regulations	Analysis
1.	--	Prospective Application Clause Clarified	
		Under the Draft Regulations, there was no specific transitional provision for existing ECBs. However, the Revised Regulations explicitly state that the Revised Regulations are prospective in application. Existing ECBs will be governed by the old regime and only reporting shifts to the new timelines.	There was a request from stakeholders to extend the benefits of the Revised Regulations to the existing ECBs as well. However, this position was not accepted by the RBI, and the substantive benefit of the Revised Regulations will only be prospective in nature. However, the reporting related framework for the existing ECBs will be aligned to the Revised Regulations.
2.	List Of Eligible Borrowers Broadened		
	<p>All entities which are eligible to receive FDI. Further, following entities are additionally eligible to raise ECBs:</p> <p>(a) Foreign currency (FCY) denominated ECB: (i) port trusts; (ii) units in SEZ; (iii) SIDBI; and (iv) EXIM Bank of India.</p> <p>(b) INR denominated ECB: Registered entities engaged in micro-finance activities, viz., registered not for profit companies, registered societies or trusts or cooperatives and non-government organizations.</p> <p>This also includes persons against whom any investigation is ongoing under FEMA.</p>	<p>(a) Person resident in India incorporated under Central Act or State Act, except individuals, so long as it is permitted to borrow under applicable law; and</p> <p>(b) Any entity or organisation (other than individuals) under a restructuring scheme or CIRP so long as it is permitted to borrow under the restructuring scheme or resolution plan.</p> <p>This also includes persons against whom any investigation is ongoing under FEMA.</p>	<p>The suggestions made by various stakeholders to specifically include trusts including REITs and InvITs as eligible borrowers has not been spelt out and left to interpretation.</p> <p>Further, entities incorporated under the laws of India (except individuals) are permitted to borrow both FCY and INR denominated ECBs, so long as they are otherwise eligible to borrow and subject to compliance with permitted end-uses.</p> <p>However, the linkage to FDI which was present in the erstwhile ECB Framework has now been removed in the Revised Regulations.</p> <p>Further, entities against whom any investigation under FEMA is ongoing by a law enforcement agency are also permitted to borrow without any prior approval and subject to disclosure of such investigation under Form ECB 1. While this position also existed under the Erstwhile Regulations, the AD Bank was required to intimate the investigating agency about such ECB. This reporting requirement has been done away with under the Revised Regulations.</p> <p>Entities undergoing CIRP or restructuring have also been permitted to avail ECBs only where the restructuring scheme or resolution plan permits such borrowing.</p>

S. No.	Erstwhile Regulations	Revised Regulations	Analysis
3.	Recognised Lenders Broadened		
	<p>The lender is required to be resident of a Financial Action Task Force (FATF) or International Organisation of Securities Commission (IOSCO) compliant country, as defined in the ECB framework, including on transfer of ECBs. Multilateral and regional financial institutions where India is a member country are also considered as recognised lenders.</p> <p>Further, foreign equity holders are allowed to provide ECBs in the following cases: (a) direct foreign equity holder with minimum 25% direct equity holding in the borrowing entity, (b) indirect equity holder with minimum indirect equity holding of 51%, or (c) group company with common overseas parent.</p>	<p>(a) A person resident outside India; and (b) A branch outside India of an entity whose lending business is regulated by the RBI. (c) A financial institution or a branch of a financial institution set up in IFSC.</p> <p>Additionally, ECBs from a related party (as defined under the Companies Act, 2013) will be permitted so long as such transaction is carried out on an arm's length basis.</p>	<p>In comparison to the Erstwhile Regulations, under the Revised Regulations:</p> <p>(a) the scope of recognised lenders has been expanded to include all persons resident outside India; (b) individuals resident outside India (including NRIs) are permitted to act as recognised lenders without being classified as a foreign equity holder; (c) foreign equity holder as a separate class under the Erstwhile Regulations has been subsumed into the wider definition of recognised lender under the Revised Regulations; (d) lenders can be from jurisdictions other than FATF or IOSCO compliant countries; (e) clarity has also been brought about (<i>vis a vis</i> the text of the Draft Regulations) in relation to the IFSC category which has been reframed as financial institution in IFSC, rather than "branch in IFSC of RBI-regulated entity"; (f) branches or subsidiaries of Indian banks were earlier only permitted to lend FCY denominated ECBs, whereas the Revised Regulations permit them to lend INR denominated ECBs as well.</p> <p>Under the Draft Regulations, RBI had also allowed borrowing from related parties, group entities or otherwise connected lender on arm's length basis which was not the case under the erstwhile ECB framework. However, in the Revised Regulations, group entities or otherwise connected lenders has been removed and only related party has been retained. These terms may also be interpreted under the ambit of related party. In any event, this position significantly improves group treasury efficiency and intra-group liquidity planning.</p>
4.	List of Permitted End-Uses Expanded		
	<p>The following end-uses are restricted under the Erstwhile Regulations:</p> <p>(a) In the business of chit fund or Nidhi Company; (b) Investment in capital market including margin trading and derivatives;</p>	<p>The following end-uses are restricted under the Revised Regulations:</p> <p>(a) In the business of chit fund or Nidhi Company; (b) Transacting in listed or unlisted securities, except for transactions undertaken by an Indian entity for</p>	<p>The new negative list provides much more flexibility in terms of permitted end-uses. It moves away from a generic negative list plus exceptions to a detailed and conditions-based framework with added items, thus reducing ambiguity.</p>

S. No.	Erstwhile Regulations	Revised Regulations	Analysis
	<p>(c) Agricultural or plantation activities; (d) Real estate activity or construction of farm-houses; and (e) Trading in transferrable development rights (TDR).</p> <p>Further, under the erstwhile ECB framework, the additional restricted end uses were as follows:</p> <p>(a) Equity investment; (b) Working capital purposes, except where borrower complies with relevant MAMP prescribed by RBI; (c) General corporate purposes, except where borrower complies with relevant MAMP prescribed by RBI; (d) Repayment of rupee loans, except where borrower complies with relevant MAMP prescribed by RBI; and (e) On-lending to borrowers for any of the above activities except in case of NBFCs where such on-lending is</p>	<p>corporate actions such as merger, demerger, amalgamation, arrangement, or acquisition of control in accordance with the Act under which the entity is incorporated/established, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Insolvency and Bankruptcy Code, 2016, as applicable.</p> <p>(c) Agricultural or plantation activities, except the host of activities which are set out in the Revised Regulations such as tea, coffee, rubber, etc. (d) Real estate business² or construction of farmhouses, with certain detailed exceptions and carve-outs; (e) On-lending for any of the purposes for which funds cannot be borrowed and utilised in this regulation;</p>	<p>In any event, the Revised Regulations have opened up the following new end-uses, which had never been permitted under the ECB regime since its inception:</p> <p>(a) Acquisition Financing: ECBs for acquisition finance of both listed and unlisted companies is permitted under various Indian regulations but only in cases where control is being acquired in the target company. This makes it clear that acquisition of minority stake which does not lead to acquisition of control stake will not be permissible. Similarly, it appears unlikely that ECB can be used for creeping acquisition.</p> <p>Further, the Revised Regulations also state that borrowing shall be availed for strategic purposes only, i.e., those driven by the core objective of creating long-term value through potential synergies, rather than for short-term gains. Separately, distressed acquisitions under IBC and SARFAESI are also eligible.</p> <p>(b) Financing of mergers, amalgamations and schemes of arrangement: ECBs for financing mergers, demergers and amalgamations will now be permitted.</p>

² "real estate business" means purchase, sale or lease of land or immovable property with a view to earning profit from there and does not include purchase, sale and lease (not amounting to transfer) of land or immovable property for the following purposes:

- (i) construction and development of industrial parks, integrated townships and SEZ;
- (ii) development of new industrial project, modernisation and expansion of existing units;
- (iii) any activity under 'infrastructure sector';
- (iv) construction-development project;
- (v) commercial or residential properties for own use of the borrower;
- (vi) real estate broking services.

Explanation:

- (a) Construction-development projects includes development of townships, construction of residential /commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships;
- (b) Transfer, in relation to real estate business includes,
 - (i) the sale, exchange or relinquishment of the asset; or
 - (ii) the extinguishment of any rights therein; or
 - (iii) the compulsory acquisition thereof under any law; or
 - (iv) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or
 - (v) any transaction, by acquiring capital instruments in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.

S. No.	Erstwhile Regulations	Revised Regulations	Analysis
	<p>undertaken in compliance with the relevant MAMP prescribed by RBI.</p>	<p>(f) Repayment of a domestic INR loan: (i) which was availed for an end-use restricted under this regulation; or (ii) which is classified as a non-performing asset (NPA) as per the applicable prudential norms; and</p> <p>(g) Trading in TDR.</p>	<p>(c) Real Estate: The Revised Regulations introduces a detailed definition of "real estate business" and clarifies its core meaning (purchase / sale / lease with a view to earning profit). It further provides multiple exclusions (viz., industrial parks, integrated townships, SEZ, infrastructure sector, construction-development projects, own use properties, broking services, etc.). This codifies real estate business much more granularly. The permissible end use by way of exclusions to the definition of 'real estate business' have been increased from those set out under the erstwhile ECB framework and now specifically include construction-development project, commercial or residential properties for own use of the borrower and real estate broking services. This also improves the position which was proposed under the Draft Regulations wherein a detailed "real estate business" definition was not provided.</p> <p>Further, the exclusions in relation to real estate business for which ECBs can be raised have now been linked to certain conditions being complied with. Dealing in, buying or selling of land and immovable property with a view to earning profit continues to remain a restricted end use.</p> <p>(d) Agricultural and plantation activities: The blanket restriction on ECBs for agricultural and plantation activities which was provided in the Erstwhile Regulations has been moved to a permitted list (controlled-condition cultivation, etc.) and limited plantation permissions (tea/coffee/rubber etc.).</p> <p>(e) Infrastructure activities: ECBs for activities listed under the Harmonised Master List of Infrastructure sub-sectors approved by the Government of India were previously permitted under the Erstwhile Regulations. These were inadvertently removed from the Draft Regulations but have now been reinstated under the Revised Regulations.</p> <p>(f) Overseas investments: Utilisation of ECB proceeds for the purposes of investments in listed and unlisted securities for overseas investment was made</p>

S. No.	Erstwhile Regulations	Revised Regulations	Analysis
			<p>specifically permissible under the Draft Regulations. However, these have not been carried over to the Revised Regulations without any explanation offered as part of the RBI feedback. While these were permissible under the FAQs published by the RBI under the erstwhile ECB framework, it remains to be seen whether this position will also carry over to the FAQs under the Revised Regulations.</p> <p>New Restriction: Repayment of a domestic INR loan: (i) which was availed for an end-use restricted under this regulation; or (ii) which is classified as a non-performing asset (NPA) as per the applicable prudential norms. This position was not contemplated under the Draft Regulations. Limb (i) appears to be a clarificatory position since re-finance of a prohibited end use is not permissible in any event. However, limb (ii) is a departure from the existing framework and may be a cause of apprehension amongst borrowers since until now borrowers in the manufacturing and infrastructure sector could avail ECBs to refinance existing NPAs.</p>
5.	Refinancing Terms Liberalised		
	<p>Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing is not reduced and all-in- cost of fresh ECB is lower than the all-in-cost of existing ECB.</p> <p>Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporates (AAA) and for Maharatna / Navratna public sector undertakings.</p>	<p>An eligible borrower may refinance an existing ECB, in part or full, by a fresh ECB, subject to the condition that refinancing doesn't result in failure to meet MAMP requirement applicable on the original borrowing (weighted outstanding maturity in case of multiple borrowings).</p>	<p>The refinancing regime has been significantly liberalised and the condition specifying that the all-in-cost of the fresh ECB should be lower than the existing ECB has been done away with. This tracks the removal of all-in-cost from the borrowing parameters.</p> <p>Further, Indian banks are now permitted to participate in all types irrespective of the credit rating of the borrower.</p>
6.	Security Creation Framework Modified		
	<p><u>AD NOC:</u> Prior approval from AD Banks was needed to create charge on assets.</p> <p><u>Guarantees:</u> Issue of corporate guarantee or personal guarantees in favour of the non-resident lender or security trustee.</p>	<p><u>AD NOC:</u> This requirement has been removed.</p> <p><u>Guarantees:</u> Issue of guarantee in favour of the lender or security trustee in accordance with the Foreign Exchange Management (Guarantees) Regulations, 2026.</p>	<p>The requirement to obtain AD Bank permission prior to creation of security has been done away with. The position under the Revised Regulations is cleaner and more direct.</p> <p>Guarantee has been shifted to a separate guarantees framework which has significantly liberalised furnishing of cross-border guarantees.</p>

S. No.	Erstwhile Regulations	Revised Regulations	Analysis
7.	Hedging Requirements Removed		
	<p>In case of FCY ECB: The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure.</p> <p>In case of INR ECB: Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The 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.</p>	<p>Hedging related provisions have been removed.</p>	<p>The Revised Regulations remove all hedging requirements unlike the position under the erstwhile ECB framework. This may result in lowering of cost of borrowing for the borrowers but will ultimately depend on the fluctuation of currency.</p>
8.	Forms of Borrowing		
	<p>FCY and INR denominated ECB</p> <p>(i) Loans including bank loans/ notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); (ii) trade credits beyond 3 years; (iii) FCCBs; (iv) FCEBs; and (v) Financial Lease.</p> <p>Only INR denominated ECB</p> <p>Preference shares Plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.</p>	<p>An eligible borrower may raise ECB in any form of commercial borrowing arrangement that involves payment of agreed interest, if any, by whatever name called, and repayment of principal. FCCB and FCEB are also ECBs.</p> <p>A list of exclusions has been separately provided.</p>	<p>There is a shift from a closed, instrument-wise list of permitted ECB forms to a principles-based, catch-all definition covering any commercial borrowing with interest (if any) and principal repayment.</p>
9.	Cost of Borrowings Requirement Aligned to Global Standards		
	<p>All-in-cost</p> <p>FCY ECB: Benchmark rate plus 500 bps spread.</p> <p>INR ECB: Benchmark rate plus 450 bps spread.</p> <p>Prepayment charges or penal interest</p>	<p>All-in-cost</p> <p>The cost of borrowing shall be in line with prevailing market conditions.</p> <p>The cost of borrowing for the ECBs with MAMP of less than 3 years is required to be in compliance with cost ceiling specified for Trade Credit.</p>	<p>This change aligns India's ECB framework with international norms where borrowing costs are typically market-driven, promotes fair pricing and reduces regulatory distortions in capital allocation by lenders.</p> <p>The removal of the all-in-cost ceiling is a welcome move for lenders making ECBs an option equitable to non-convertible debentures subscribed by foreign portfolio investors, from a pricing perspective.</p>

S. No.	Erstwhile Regulations	Revised Regulations	Analysis				
	Not more than 2% over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.	Prepayment charges or penal interest Required to be in line with prevailing market conditions.	Further, linking prepayment costs to market conditions allows borrowers and lenders to negotiate terms that reflect real-time pricing and global benchmarks. Further, in the Revised Regulations, such charges have been delinked from being subject to satisfaction of the designated AD Category I bank which was a proposal at the Draft Regulations stage. This is a big respite for the for both the borrowers and the lenders.				
10.	Standardisation of MAMP and Clarifications on Non-Applicability of MAMP						
	<p>MAMP for ECB is 3 years. However, different MAMPs have been prescribed for certain specific categories of the borrowers or end-uses including the following:</p> <table border="1" data-bbox="248 635 736 783"> <tr> <td data-bbox="248 635 613 783">ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.</td> <td data-bbox="613 635 736 783">1 year</td> </tr> </table>	ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year	<p>MAMP of 3 years for all categories of borrowers and end-uses except below:</p> <table border="1" data-bbox="797 544 1346 724"> <tr> <td data-bbox="797 544 1189 724">ECB raised by manufacturing sector borrowers up to outstanding stock of USD 150 million or its equivalent per financial year.</td> <td data-bbox="1189 544 1346 724">1-3 years</td> </tr> </table> <p>Further, MAMP is not required to be met in the following scenarios:</p> <ul style="list-style-type: none"> (a) Conversion of ECB (including FCCB and FCEB) to non-debt instruments in accordance with FEMA; (b) Repayment of ECB using the proceeds from issuance of non-debt instruments on repatriation basis in accordance with the FEMA after the drawdown of the ECB; (c) Refinance of ECB in terms of the regulations; (d) Waiver of debt by the lender; and (e) Closure, merger, acquisition, resolution or liquidation of either the lender or the borrower. 	ECB raised by manufacturing sector borrowers up to outstanding stock of USD 150 million or its equivalent per financial year.	1-3 years	<p>Under the Revised Regulations, the RBI has prescribed a single MAMP for all types of borrowers and end-uses (other than manufacturing sector companies for ECB of up to USD 150 million (which was capped at USD 50 million under the Draft Regulations)). This is a departure from the position under the Erstwhile Regulations, where different MAMPs were prescribed for different borrowers or end-uses.</p> <p>RBI has also clarified the scenarios when the MAMP is not required to be met. This list was not present under the Erstwhile Regulations. Further, from the list suggested at the time of the Draft Regulations, the RBI has also exempted refinancing under the ECB regulations from MAMP requirements under the list now suggested under the Revised Regulations. This will provide greater flexibility in deal structuring. It will also enable borrowers to prepay / replace costlier ECBs and align the repayment profile to cashflows without being constrained by MAMP requirements. From a lender perspective, this has the potential of providing shorter-dated refinancings thus improving deal potentials and overall market liquidity.</p>
ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year						
ECB raised by manufacturing sector borrowers up to outstanding stock of USD 150 million or its equivalent per financial year.	1-3 years						
11.	Increased Borrowing Limits						
	Up to USD 750 million or equivalent per financial year.	Up to the higher of: (a) outstanding ECB up to USD 1 billion; or (b) total outstanding borrowing (external and domestic) up to	The significant increase in headroom for borrowing proposed has to be linked with the relevant borrower's financial strength on a standalone basis. For ECBs exceeding the revised limits, borrowers will have to apply for RBI approval for further enhancement. It has also				

S. No.	Erstwhile Regulations	Revised Regulations	Analysis
		<p>300% of net worth³ as per the last standalone audited balance sheet. ECB for re-financing shall not form part of the borrowing limit</p> <p>This ceiling or borrowing limit will not be applicable upon regulated entities regulated by a financial sector regulator⁴.</p>	<p>been clarified that ECB for re-financing shall not form part of the borrowing limit.</p> <p>In terms of exclusions, the outstanding borrowing shall not include non-fund based credit and funds raised through issuance of securities which are mandatorily convertible to equity. Further, the limits are not applicable for entities regulated by a financial sector regulator. However, they will continue to be guided by prudential norms specified by the relevant regulators.</p>
12.	Introduction of New Currencies for Borrowing		
	ECB can be raised only in any freely convertible foreign currency or INR.	ECB can be raised in any foreign currency or INR.	<p>ECBs can be raised in any foreign currency and are not required to be raised only through freely convertible foreign currency.</p> <p>All eligible borrowers are now permitted to borrow in both FCY and INR denominated ECBs.</p>
13.	Increased Fungibility for Conversion of INR ECB Into FCY ECB Permitted		
	Change of currency from INR to any freely convertible foreign currency is not permitted.	Currency of ECB from INR to FCY, FCY to INR and one foreign to currency to another foreign currency can be changed.	This change will provide greater flexibility for the borrowers in structuring the transactions and attract more diverse investor interest.
14.	Relaxed Reporting and Compliance Requirements		
	<p>(a) Form ECB 2 is required to be filed to report actual ECB transactions on monthly basis within 7 working days from the close of month to which it relates.</p> <p>(b) Changes in ECB parameters should be reported in revised Form ECB not later than 7 days from the changes effected.</p>	<p>The Revised Regulations require the following reporting:</p> <p>(a) 'Form ECB 1' for providing details of the ECB and obtaining loan registration number.</p> <p>(b) 'Form ECB 2' is required to be filed for reporting drawdown and debt servicing, within 7 calendar days from the end of the month in which such drawdown and debt servicing was undertaken.</p>	<p>The title of 'Form ECB' has been revised to 'Form ECB 1'.</p> <p>The manner of reporting under Form ECB 2 has been changed from periodical to event-based. Further, for reporting changes in ECB parameters, the timeline has been relaxed from 7 working days to 7 calendar days from the end of the month in which such change was given effect, which will provide ease to borrowers for complying with the requirement of filing revised Form ECB 1.</p>

³ 'Net worth' means: (i) for companies, the definition as provided under the Companies Act, 2013; and (ii) for other entities, sum of funds recorded in the balance sheet under capital + undistributed profits after deducting from the (accumulated losses + deferred expenditure + miscellaneous expenditure not written off) as per the last audited balance sheet.

⁴ 'Financial sector regulator' means a body established under any law in force in India and includes RBI, SEBI, IRDAI and PFRDA.

S. No.	Erstwhile Regulations	Revised Regulations	Analysis
		(c) Revised Form ECB 1 is required to be filed for reporting changes in the ECB parameters, within 7 calendar days from the end of the month in which such change was given effect.	

Comments

The current ECB regime liberalization is a significant departure in the RBI's approach on foreign exchange debt transactions and creates unprecedented flexibility in structuring of transactions. While earlier the ECB regime was largely prescription based and relaxations, while frequent, were mostly in the form of slight easing up of restrictions such as all-in cost, end-use and MAMP - this time the RBI has made a complete overhaul of the regime by significantly curtailing the restrictions which were interfering with deal making under the ECB route.

For instance, the removal of all-in cost cap for transactions having a MAMP of 3 years or more, goes a long way in making the ECB route commercially more attractive on the supply side for foreign creditors. On the demand side, the increase in the borrowing limit for transactions in the manufacturing sector (having MAMP of only 1 year), from USD 50 Mn to USD 150 Mn goes a long way in helping the businesses in India especially when the domestic bank lending to the industry has been generally shrinking for the last couple of years.

Furthermore, the relaxation of end-use restrictions, more importantly in the real estate and acquisition financing domain, has created a palpable alternative to debt raising under the FPI NCD route, where the debentures had to be listed in most situations and consequently, brought in strict and detailed compliance and cost requirements for the debt listed issuers (even more so when the issuers were classified as high value debt listed entities being virtually treated nearly the same as equity listed entities in many ways). Now, if a real estate financing or acquisition financing transaction under the ECB domain can be structured as a loan facility or an instrument with MAMP of 3 years or more, the parties will enjoy complete flexibility on pricing and to a large extent on the end-use, without having the requirement of compulsorily listing the debentures. This, in turn, will not only feed the strategic acquirers in the Indian market but also meaningfully help the real estate construction industry.

- *Manisha Shroff (Partner), Dr. Siddharth Srivastava (Partner), Rajeev Vidhani (Partner), Arijit Sarkar (Partner), Mohit Nad (Principal Associate), Rajshekhar Upadhyaya (Principal Associate), Manas Pandey (Principal Associate) and Anushka Sinha (Senior Associate).*



About Khaitan & Co

Khaitan & Co is a top tier and full-service law firm with over 1300+ legal professionals, including 300+ leaders and presence in India and Singapore. With more than a century of experience in practicing law, we offer end-to-end legal solutions in diverse practice areas to our clients across the world. We have a team of highly motivated and dynamic professionals delivering outstanding client service and expert legal advice across a wide gamut of sectors and industries.

To know more, visit www.khaitanco.com



This document has been created for informational purposes only. Neither Khaitan & Co nor any of its partners, associates or allied professionals shall be liable for any interpretation or accuracy of the information contained herein, including any errors or incompleteness. This document is intended for non-commercial use and for the general consumption of the reader, and should not be considered as legal advice or legal opinion of any form and may not be relied upon by any person for such purpose. It may not be quoted or referred to in any public document, or shown to, or filed with any government authority, agency or other official body.