



LEX NEWSLETTER ZONE

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Reserve Bank of India

External Commercial Borrowings (ECB)
 Policy – Rationalization and Liberalization

-Ranjan R., Associate

The Reserve Bank of India has rationalized and liberalized the norms for External Commercial Borrowings allowing Indian Companies to access cheaper funds from overseas markets. The following are the key liberalized norms:

An Uniform all in cost ceiling of 450 basis points over the benchmark rate. The benchmark rate will be 6 month USD LIBOR (or applicable benchmark for respective currency) for Track I and Track II, while it will be prevailing yield of the Government of India securities of corresponding maturity for Track III (Rupee ECBs) and RDBs.

The ECB Liability to Equity Ratio for ECB raised from direct foreign equity holder under the automatic route to 7:1. This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.

The list of eligible borrowers for the purposes of External Commercial Borrowings (ECB's) have been expanded and includes Housing Finance Companies regulated by the National Housing Bank and Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908 to avail ECB's under all tracks.

Companies engaged in the business of Maintenance, Repair and Overhaul and freight forwarding to raise ECBs denominated in INR only.

The funds raised through ECB cannot be used for investment in real estate or purchase of land except when used for affordable housing as defined in harmonised Master List of notified Infrastructure Sub-sectors by Government of India, construction and development of SEZ and industrial parks/integrated townships, investment in capital market, Equity Investment.

Withdrawal of exemptions granted to government owned Non-Banking Financial Companies.

-Vidushi Kesarwani, Intern

The Reserve Bank of India ("RBI"), vide its notification dated May 31, 2018 has withdrawn

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exemptions from regulatory and statutory provisions granted to government owned Non-Banking Financial Companies ("NBFC").

The objective behind such a withdrawal is to place both the NBFCs at an equal footing on compliance with specific RBI rules, enhancing competition between the two structures of NBFCs.

RBI has specified the timeline for government owned NBFCs to meet the norms of capital adequacy, asset classification, and maintenance of reserve fund and provisioning requirements, corporate governance framework and fair practice code which they were earlier exempt from-the final deadline being the end of the financial year 2022.

This four-year window also extends to the government owned NBFCs for maintaining the Capital to Risk Assets ratio to a 15 percent in case of a 10% Tier I capital as is currently maintained by privately owned NBFCs. The RBI has however given the NBFCs set up to aid specific sectors the leverage to approach the RBI for an exemption with respect to concentration of credit or investment.

Master directions for the relevant provisions have been amended and a subsequent notification is to follow withdrawing exemption under section 45NC of the RBI Act, 1934.

Such exemptions are an obstruction to fair market competition and their withdrawals will indubitably enhance the market experience by increasing fair competition.

Introduction of a new system for monitoring of foreign investment limits in listed Indian companies.

-Vidushi Kesarwani, Intern

The Reserve Bank of India ("RBI"), in consultation with Securities and Exchange Board of India ('SEBI'), vide its notification dated May 1, 2018 has decided to put in place a new system for monitoring of foreign investment limits in listed companies. This system has been emplaced to ensure compliance with the various foreign investment limits, the necessary infrastructure and systems needed for operationalizing the same shall be made available by the depositories as has been notified vide circular dated April 5, 2018 r/w circular dated April 27, 2018.

Priorly the RBI received only data on investment made by Foreign Portfolio Investors (FPI) and Non-resident Indians (NRI) on stock exchanges from the custodian banks and Authorized Dealer Banks for their respective clients, based on which restrictions beyond a threshold limit are imposed on FPI/ NRI investment in listed Indian companies.

Now, all listed companies are required to provide the specified data/ information on foreign investment to the depositories, in terms of para 6 of Annexure A of the circular dated April 05, 2018; the requisite information should have had been furnished before May 15, 2018.

The listed Indian companies, in non-compliance with the above instructions will be non-compliant with Foreign Exchange Management Act, 1999 (FEMA) and regulations made thereunder and consequently will not be able to receive foreign investment.

These directions have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999

Scope of investment by Foreign Portfolio Investors (FPI) in corporate bonds

-Vidushi Kesarwani, Intern





The Reserve Bank of India ("RBI") vide its notification dated May 1, 2018 has affected two changes amending its circular dated April 27, 2018:

- (i) It announced the withdrawal of the minimum residual maturity requirement for Central Government securities (Gsecs) and State Development Loans (SDLs) categories for short term corporate bonds, capping it at 20% of that foreign investor's total holding of corporate securities.
- (ii) It permitted the FPIs to invest in corporate bonds with minimum residual maturity of above one year but no cap on investment in securities with residual maturity below one year was stipulated for FPI investments in corporate bond.

The central bank has introduced this cap for corporate bonds with the objective of bringing consistency across debt categories; previously the foreign investors were only permitted to invest in long term corporate bonds but this notification enables them to invest in short term corporate bonds as well with a cap of 20%.

This cap applies on a continuous basis and at any point in time, all securities with residual maturity of less than one year will be reckoned for the 20% limit, regardless of the maturity of the security at the time of purchase by the FPI.

It gave the FPIs a time frame of six months from May 2, 2018 to bring its investments in short term corporate bonds below 20% if for any reason it exceeded the cap as on that day.

It further clarified that FPIs are permitted to invest in treasury bills issued by the Central Government and that the term "related FPIs" in paragraph 3 (e) (i) of the afforested circular refers to all FPIs registered by a non-resident entity.

These directions are applicable with immediate effect and have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999.

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