



Frequently Asked Questions

External Commercial Borrowings (ECB)

FREQUENTLY ASKED QUESTIONS

External Commercial Borrowings (ECB), Trade Credits (TC) & Structured Obligations

Important terms used:

1. All-in-Cost: It includes rate of interest, other fees, expenses, charges, guarantee fees, ECA charges, whether paid in foreign currency or INR **but will not include commitment fees and withholding tax payable in INR.** In the case of fixed rate loans, the swap cost plus spread should not be more than the floating rate plus the applicable spread. Additionally, for FCCBs, the issue related expenses should not exceed 4 per cent of the issue size and in case of private placement; these expenses should not exceed 2 per cent of the issue size, etc. Under TC Framework, all-in-cost shall include rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or INR. Withholding tax payable in INR shall not be a part of all-in-cost. Various components of all-in-cost have to be paid by the borrower without taking recourse to the drawdown of ECB/TC, i.e., ECB/TC proceeds cannot be used for payment of interest/charges.

2. Automatic route: For the automatic route, the cases are examined & processed by the Authorized Dealer Category-I (AD Category-I) banks.

3. Approval route: Under the approval route, the prospective borrowers are required to send their requests to the Reserve Bank through their AD Banks for examination.

4. Authorized dealer: Means a person authorized as an authorized dealer under subsection (1) of section 10 of the FEMA, 1999 (42 of 1999).

5. Designated Authorized Dealer Category I Bank: It is the bank branch which is designated by the ECB/TC borrower for meeting the reporting requirements including obtaining of the LRN/LIN from the Reserve Bank, exercising the delegated powers under these guidelines and monitoring of ECB/TC transactions.

6. Benchmark rate: Benchmark rate in case of FCY ECB/TC refers to 6-months LIBOR rate of different currencies or any other 6-month interbank interest rate applicable to the currency of borrowing, for e.g., EURIBOR. Benchmark rate in case of Rupee denominated ECB/TC will be prevailing yield of the Government of India securities of corresponding maturity.

7. ECB liability-Equity ratio: For the purpose of ECB liability-equity ratio, ECB amount will include all outstanding amount of all ECB (other than INR denominated) and the proposed one (only outstanding ECB amounts in case of refinancing) while equity will include the paid-up capital and free reserves (including the share premium received in foreign currency) as per

the latest audited balance sheet. Both ECB and equity amounts will be calculated with respect to the foreign equity holder. Where there is more than one foreign equity holder 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. The ratio will be calculated as per latest audited balance sheet.

8. FATF compliant country: A country that is a member of the Financial Action Task Force (FATF) or a member of a FATF-Style Regional Body; and should not be a country identified in the public statement of the FATF as (i) A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or (ii) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

9. Foreign Currency Convertible Bonds (FCCBs): It refers to foreign currency denominated instruments which are issued in accordance with the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993, as amended from time to time. Issuance of FCCBs shall also conform to other applicable regulations. Further, FCCBs should be without any warrants attached.

10. Foreign Currency Exchangeable Bonds (FCEBs): It refers to foreign currency denominated instruments which are issued in accordance with the Issue of Foreign Currency Exchangeable Bonds Scheme, 2008, as amended from time to time. FCEBs are exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. Issuance of FCEBs shall also conform to other applicable regulations.

11. Foreign Equity Holder: It means (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.

12. Infrastructure Sector: It has the same meaning as given in the Harmonized Master List of Infrastructure sub-sectors, approved by Government of India vide Notification F. No. 13/06/2009-INF, as amended / updated from time to time. For the purpose of ECB, “Exploration, Mining and Refinery” sectors will be deemed as in the infrastructure sector.

13. Infrastructure Space Companies: Companies in the infrastructure sector, Non-Banking Finance Companies undertaking infrastructure financing, Holding Companies/ Core Investment Companies undertaking infrastructure financing, Housing Finance Companies regulated by National Housing Bank and Port Trusts (constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908).

14. IOSCO Compliant Country: A country whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the SEBI for information sharing arrangements.

15. Person Resident in India: It shall have the same meanings as assigned to them in Sections 2(v) of the FEMA, 1999.

16. Real Estate Activities: Any real estate activity involving own or leased property, for buying, selling and renting of commercial and residential properties or land and also includes activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling, letting or managing real estate. However, this would not include, (i) construction/development of industrial parks/integrated townships/SEZ (ii) purchase/long term leasing of industrial land as part of new project/modernization of expansion of existing units and (iii) any activity under 'infrastructure sector' definition.

PART I – EXTERNAL COMMERCIAL BORROWINGS (ECB)

A. BASIC QUERIES

Q. 1. What is External Commercial Borrowing (ECB)?

Ans. External Commercial Borrowing is commercial loans raised by eligible resident entities from recognised non-resident entities and should conform 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.

Q. 2. In which form the ECB can be raised?

Ans. ECB can be raised in form of loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease. Also, plain vanilla Rupee denominated bonds can be issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.

Q. 3. Do FCNR (B) loans given by AD Category I banks come under the ECB framework?

Ans. No. Foreign currency loans given domestically by AD Category I banks out of the proceeds of FCNR (B) deposits do not come under the ECB framework.

Q. 4. What precautions have to be taken before raising loan from non-residents?

Ans. Borrowings from overseas have to be in compliance with the applicable ECB guidelines / provisions contained in the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2018 issued vide Notification No. FEMA 3 (R)/2018-RB dated December 17, 2018, as amended from time to time.

B. ELIGIBILITY FOR RAISING ECB

Q. 5. Who are eligible borrowers for ECB?

Ans. All entities eligible to receive FDI as also Port Trusts, Units in SEZ, SIDBI & Exim Bank are eligible borrowers for ECB.

Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organizations are eligible to raise ECB in INR only.

C. CURRENCY OF ECB

Q. 6. In which currency ECB is permitted?

Ans. ECB can be raised in any freely convertible foreign currency as well as in INR.

Q. 7. Whether the change in currency of borrowing i.e. ECB is permitted?

Ans. Change in currency from one freely convertible currency in to any other freely convertible currency as well as in INR is freely permitted whereas change in currency from INR to any freely convertible foreign currency is not permitted.

D. RECOGNISED LENDERS/ INVESTORS

Q. 8. Who are qualified as Recognized lenders for ECB?

Ans. The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However,

- a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognized lenders;
- b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and
- c) Foreign branches / subsidiaries of Indian banks are permitted as recognized lenders only for FCY ECB (except FCCBs and FCEBs).

Q. 9. Is the minimum equity holding requirement of foreign equity holder (direct/indirect) applicable where the end uses is other than general corporate purpose/working capital/repayment of Rupee loans?

Ans. The foreign equity holders as defined at Paragraph 1.11 of the Master Direction No. 5 on 'External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 (MD) are eligible to lend for the end-uses given at Paragraph 2.1.viii(d), 2.1.viii(e) and 2.1.viii(f) of the MD. For end-uses, other than those in the negative list, recognised lenders are given at Paragraph 2.1.iv of the MD.

Q. 10. Can the foreign equity holder dispose-off the holding once ECB is contracted?

Ans. No, all ECB guidelines including those related to minimum equity holding, are to be fulfilled during the whole tenure of the ECB and not only at the time of contracting of ECB.

Q. 11. Can Indian banks participate in the process of issuance of Rupee Denominated Bonds overseas in any other manner?

Ans. Indian banks **cannot subscribe** to RDBs issued overseas in primary market but can be arrangers/ underwriters/ market makers/ traders subject to compliance with prudential norms.

Q. 12. Can persons resident in India subscribe to bonds (foreign currency/INR) issued by eligible ECB borrowers in overseas centres or IFSCs as permitted in the ECB framework?

Ans. No. AD banks should ensure that persons resident in India do not have any exposure to borrowings by eligible entities under this framework either directly or indirectly except foreign branches/ subsidiaries of Indian banks abroad or any other permitted entities. Further, establishing borrowing structures/modalities which contravene the guidelines shall render themselves liable for penal action as prescribed under FEMA.

Q. 13. Individuals can be recognised lenders if they are foreign equity holders or for subscription to bonds/debentures listed abroad. Should such lenders also be from FATF/IOSCO compliant jurisdictions?

Ans. Yes.

E. AVERAGE MATURITY PERIOD

Q. 14. What is minimum average maturity period (MAMP) for ECB?

Ans. The MAMP for ECB is 3 years. However for specific categories mentioned below, the MAMP is prescribed as under.

Category	MAMP
ECB raised by manufacturing Companies up to USD 50 million or its equivalent per financial year	1 year
ECB raised by foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 years
ECB for working capital purposes, general corporate purposes & for on-lending by NBFCs for the said purposes	10 years
ECB for 1) repayment of Rupee loans availed domestically for capital expenditure & 2) On- lending by NBFCs for the same purpose	7 years
ECB for 1) repayment of Rupee loans availed domestically for purposes other than capital expenditure & 2) On- lending by NBFCs for the same purpose	10 years

Q. 15. How is average maturity period calculated?

Ans. You may refer to https://rbidocs.rbi.org.in/rdocs/Content/PDFs/12EC160712_A6.pdf for illustration purposes.

Q. 16. Can door-to-door maturity be used in lieu of average maturity?

Ans. No.

Q. 17. In case of an ECB raised from foreign equity holder and utilized for general corporate purpose/working capital/repayment of Rupee loans, can repayment of principal of ECB start before the completion of 5 years?

Ans. Yes, however, the ECB should have minimum average maturity period of 5 years.

F. LEVERAGE CRITERIA AND BORROWING LIMIT

Q. 18. What is the limit for raising ECB under Automatic Route?

Ans. Under Automatic Route, all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year. Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio for ECB raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

Q. 19. Should the proposed ECB be added to all outstanding ECBs for the purpose of ECB liability to equity ratio?

Ans. Yes, apart from ECB raised for refinancing where the proposed ECB amount may not be taken into account to avoid double counting.

Q. 20. Does the equity in “ECB liability to Equity ratio” include non-convertible preference capital?

Ans. No.

Q. 21. Should the proposed ECB be added to all outstanding ECBs for arriving at the individual limit for raising of ECBs?

Ans. The individual limit for raising ECB under the automatic route will take into account all ECBs raised in the financial year including the proposed one. However, refinancing of ECB amount will not be considered for arriving at individual limit per financial year. Also, the limit will be restored at the beginning of new financial year.

Q. 22. Is the debit balance in the profit and loss account for losses incurred by the Eligible Borrower, if any, required to be deducted from the free reserve while calculating the ECB liability-equity ratio?

Ans. Yes. Any debit balance in the profit and loss account as per the latest audited balance sheet of the Eligible Borrower should be deducted from the equity for computing the ECB liability-equity ratio.

Q. 23. Can an eligible borrower simultaneously raise both Foreign Currency and INR denominated ECBs?

Ans. Yes, as long as the ECBs are in compliance with the ECB guidelines for the respective currencies as per RBI guidelines. The individual limit will include all ECBs raised, whether in foreign currency or INR.

Q. 24. Is the enhancement of ECB amount permitted under the delegated powers?

Ans. Yes, provided the enhanced amount does not breach the applicable **annual limit** for the automatic route for the current financial year and the other parameters of the ECB are in compliance with the existing ECB guidelines also. Since this would be considered as change in terms for the same ECB, no separate LRN is required for the enhanced amount.

G. ALL-IN-COST

Q. 25. What is present All-in-Cost ceiling per annum?

Ans. It is Benchmark rate plus 450 bps spread

Q. 26. What is the present ceiling for other costs?

Ans. Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.

Q. 27. Does all-in-cost ceiling apply on a continuous basis or can it be calculated even on an average basis?

Ans. All-in-cost should be within the applicable ceiling at all times, e.g., breach of all-in-cost ceiling in the first year and a much lower all-in-cost in the second year so as to comply on an average, is not permitted.

Q. 28. Can interest during construction stage be paid out of ECB borrowings?

Ans. The definition of all-in-cost **prohibiting** use of ECB proceeds for payment of interest/ charges is not applicable to ECBs raised for project finance and utilised for payment of guarantee fees (like ECA Premium) and interest during construction, provided the said components are part of project cost and capitalised by the borrower.

H. END-USES

Q. 29. For what purposes, the ECB cannot be utilised?

Ans. The negative list, for which the ECB proceeds cannot be utilized, includes the following:

- a) Real estate activities.
- b) Investment in capital market.
- c) Equity investment.
- d) Working capital purposes, except in case of ECB mentioned at (b) and (c) above.
- e) General corporate purposes, except in case of ECB mentioned at v(b) and v(c) above.
- f) Repayment of Rupee loans, except in case of ECB mentioned at v(d) and v(e) above.
- g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at v(c), v(d) and v(e) above.

Q. 30. Is the reimbursement of expenditure incurred in the past a permissible end-use under the ECB framework?

Ans. The reimbursement of expenditure incurred in the past is not a permissible end-use under the ECB framework.

Q. 31. Can ECB be availed of for making equity investment domestically or buying goodwill?

Ans. No. Equity investment either directly or indirectly (through purchase of goodwill) is not permitted.

Q. 32. Can ECB be availed of for making contribution in an LLP?

Ans. No, it is not permitted.

Q. 33. Can an eligible borrower raise fresh foreign currency ECB for repayment of existing Rupee denominated ECB?

Ans. Refinancing of Rupee denominated ECB with Foreign Currency denominated ECB is not permitted.

Q. 34. Can ECB proceeds be used by eligible resident borrowers for investment in their overseas JV/WOS as per the extant overseas investment guidelines?

Ans. Yes. ECB proceeds can be utilized for overseas investment as permitted under the overseas investment guidelines.

Q. 35. Is on-lending treated as working capital for borrowers who are engaged in the business of on-lending?

Ans. For the purpose of ECB, on-lending by borrowers who are engaged in the business of on-lending is not treated as working capital. Additionally, the borrowers shall need to adhere to the guidelines issued by the concerned sectoral or prudential regulator in this regard.

Q. 36. Can the housing finance companies raise ECB for on-lending to individual borrowers exclusively for flats/units in the affordable housing projects as defined in Harmonized Master List of Infrastructure Sub-sectors notified by Government of India?

Ans. Yes.

I. REFINANCING OF ECB

Q. 37. Can ECB raised under the earlier ECB framework be refinanced/ partially refinanced through an ECB raised under extant ECB framework?

Ans. Yes, provided that the borrower continues to be eligible to raise ECB under the extant ECB framework, all-in-cost is lower than the all-in-cost of existing ECB, residual maturity is not reduced and the new ECB is in compliance with the extant ECB framework as well.

Q. 38. Can refinancing/ partial refinancing be undertaken under auto route even for ECBs raised under approval route, subject to compliance with guidelines?

Ans. Yes.

Q. 39. Is refinancing of ECBs raised from foreign equity holders and utilised for working capital/ general corporate purpose/ repayment of Rupee loans permitted?

Ans. Yes. However, the new ECB lenders should also be foreign equity holders as defined in the ECB framework and subject to applicable refinancing guidelines.

J. HEDGING UNDER ECB FRAMEWORK

Q. 40. What are hedging provisions for ECB?

Ans. 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. Infrastructure space companies shall have a Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of the ECB and report the position to RBI through Form ECB 2. The following operational aspects with respect to hedging should be ensured :A) Coverage: The ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower) B) Tenor and rollover: A minimum tenor of one year for the financial hedge would be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB C) Natural Hedge: Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be

considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting year. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as a natural hedge.

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.

Q. 41. Can an entity raising INR ECB including issuance of Rupee denominated bonds overseas, assume foreign currency risk on account of liabilities arising out of such ECBs?

Ans. Any entity raising INR ECB (including issuance of Rupee denominated bonds overseas) is not permitted to convert the liability arising out of such ECBs into a foreign currency liability in any manner or assume foreign currency risk in any manner by either entering into a derivative contract or otherwise.

Q. 42. Can the existing hedge(s) for ECBs be rolled over to the extent of 100 per cent of outstanding ECB exposure?

Ans. Yes. The prescription is that of a minimum mandatory hedge.

Q. 43. What are the permitted derivative products for hedging of ECB?

Ans. Users may refer to Master Direction on Risk Management and Inter-bank dealings dated July 5, 2016, as amended from time to time.

K. Reporting

Q. 44. What precautions have to be taken at the time of filing of Form ECB in respect of an ECB?

Ans. Any draw-down in respect of an ECB should happen only after obtaining the Loan Registration Number (LRN) from RBI by filing duly certified Form ECB to the Director, External Commercial Borrowings Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051. It should be ensured that all terms and conditions of the ECB are reported correctly in Form ECB and none of the columns are left blank (such columns which are not applicable for the borrowing or against which 'nil' information has to be given, should be suitably covered). Changes in ECB parameters, whether under the automatic route with the approval of Authorised Dealer Category –I banks or under the approval route with prior approval of the RBI, should also be reported to the DSIM through revised Form ECB at the earliest, in any

case not later than 7 days from the changes effected. While submitting revised Form ECB, the changes should be specifically mentioned in the communication. Any failure to comply with reporting guidelines in respect of Form ECB for an ECB may invite penal action under FEMA.

Q. 45. How are actual transactions of an ECB reported to RBI?

Ans. The borrowers are required to report actual ECB transactions, correctly and fully, through duly certified Form ECB 2 through the Authorised Dealer Category-I bank to DSIM as per the periodicity specified by the RBI. None of the columns in Form ECB 2 should be left blank (such columns which are not applicable for the borrowing or against which 'nil' information has to be given, should be suitably covered). The Form ECB 2 should reach DSIM within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 suitably. Any failure to comply with reporting guidelines in respect of Form ECB 2, including failure to adhere to periodicity of reporting, may invite penal action under FEMA.

Q. 46. In light of the New ECB framework, does the borrower need to file revised Form ECB?

Ans. No, in case no changes are made in terms and conditions of ECB, there is no need to file revised Form ECB (erstwhile Form 83).

Q. 47 How the delay in reporting be regularised by borrower?

Ans. Any borrower, who is otherwise in compliance of ECB guidelines, can regularize the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix:

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF (INR)
1	Form ECB 2	Up to 30 calendar days from due date of submission	5,000.00
2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	50,000.00
3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	100,000.00

The borrower, through its AD bank, may pay the LSF by way of demand draft in favour of

“Reserve Bank of India” or any other mode specified by the Reserve Bank. Such payment should be accompanied with the requisite return(s). Form ECB and Form ECB 2 returns reporting contraventions will be treated separately. Non-payment of LSF will be treated as contravention of reporting provision and shall be subject to compounding or adjudication as provided in FEMA 1999 or regulations/rules framed thereunder.

Q. 48. Is LSF applicable to old ECB 2 returns also?

Ans. No. LSF provisions will be applicable to ECB 2 returns submitted from February 2019 onwards i.e. Form ECB 2 submitted in the month of February for transactions conducted in the month of January 2019.

Q. 49. Is LSF applicable for each Form ECB 2 and to nil returns as well?

Ans. Yes. LSF is applicable for non-submission of each Form ECB 2, including Nil returns.

Q. 50. How the borrower shall report the change in terms & conditions of ECB?

Ans. Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.

Q. 51 Who are treated as untraceable entities?

Ans. Any borrower who has raised ECB will be treated as ‘untraceable entity’, if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

- a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorized by the AD bank for the purpose;
- b) Entities have not submitted Statutory Auditor’s Certificate for last two years or more;

Q. 52 What action is expected from A.D. Bank in respect of untraceable entities?

Ans. The followings The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically

or electronically, for past eight quarters or more.

- a) File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;
- b) No fresh ECB application by the entity should be examined/processed by the AD bank;
- c) Directorate of Enforcement should be informed whenever any entity is designated "UNTRACEABLE ENTITY"; and
- d) No inward remittance or debt servicing will be permitted under auto route.

L. MISCELLANEOUS

Q. 53. Which proposals of ECB are considered under automatic route?

Ans. ECBs confirming the parameters prescribed under frame work described above are considered under automatic route. Entities desirous to raise ECB under the automatic route to approach an AD Category I bank with their proposal along with duly filled in & certified form ECB in duplicate. AD Category I bank will forward one copy to the form ECB to The Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051 (Contact numbers 022-26572513 and 022-26573612). Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank. RBI shall allot LRN to respective ECB. Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank.

Q. 54. What is the procedure for raising ECB under approval route?

Ans. For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered by RBI keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (re-fixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee.

Q. 55. Which powers are delegated to AD category I Bank to deal with ECB cases?

Ans. The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECB, except for FCCBs/FCEBs, duly ensuring that the changed

conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s). Further, the following can also be undertaken under the automatic route:

1. AD Category I bank can be changed subject to obtaining no objection certificate from the existing AD Category I bank.
2. The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECB contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to DSIM.
3. Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB. Further, refinancing of ECB raised under the previous ECB frameworks may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework. Raising of fresh ECB to part refinance the existing ECB is also permitted subject to same conditions. Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporates (AAA) and for Maharatna/ Navratna public sector undertakings.
4. Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:
 - i. The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.
 - ii. The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;
 - iii. Applicable pricing guidelines for shares are complied with;
 - iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:
 - a) For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".
 - b) For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.
 - c) For conversion of ECB into equity in phases, reporting through

Form FC-GPR and Form ECB 2 Return will also be in phases.

- v. If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;
 - vi. Consent of other lenders, if any, to the same borrower is available or at least information regarding conversions is exchanged with other lenders of the borrower.
 - vii. For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.
5. AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:
- i. the underlying ECB is in compliance with the extant ECB guidelines,
 - ii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and
 - iii. No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Once the aforesaid stipulations are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB, subject to the following:

- i. Creation of Charge on Immovable Assets: The arrangement shall be subject to the following:
 - a) Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017, as amended from time to time.
 - b) The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.
 - c) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India

and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

- ii. Creation of Charge on Movable Assets: In the event of enforcement/ invocation of the charge, the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic lender/s, if any.
- iii. Creation of Charge over Financial Securities: The arrangements may be permitted subject to the following:
 - a) Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.
 - b) In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.
 - c) In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time.
- iv. Issue of Corporate or Personal Guarantee: The arrangement shall be subject to the following:
 - a) A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorized to execute such guarantees on behalf of the company or in individual capacity should be obtained.
 - b) Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.
 - c) Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.
 - d) ECB can be credit enhanced / guaranteed / insured by overseas party/

parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

6. While exercising the delegated powers, the AD Category I banks should ensure that:
- i. The changes permitted are in conformity with the applicable ceilings / guidelines and the ECB continues to be in compliance with applicable guidelines. It should also be ensured that if the ECB borrower has availed of credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, any extension of tenure of ECB (whether matured or not) shall be subject to applicable prudential guidelines issued by Department of Banking Regulation of Reserve Bank including guidelines on restructuring.
 - ii. The changes in the terms and conditions of ECB allowed by the ADs under the powers delegated and / or changes approved by the Reserve Bank should be reported to the DSIM as given at paragraph 6.2 above. Further, these changes should also get reflected in the Form ECB 2 returns appropriately.
 - iii.

Q. 56. Whether Indian Banks or financial institutions are permitted to issue Guarantees for ECB purpose?

Ans. Issuance of any type of guarantee relating to ECB by Indian Banks, all India financial institutions & NBFCs is not permitted. Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs/ FCEBs in any manner whatsoever.

Q. 57. Can ECB proceeds be parked abroad or domestically pending utilization?

Ans. ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

Q. 58. Can the interest accrued on ECB be converted into Equity under the extant norms?

Ans. Yes. Extant norms permit both ECB principal and interest to be converted into equity

subject to applicable conditions as given under Paragraph 7.4 of the Master Direction No. 5 on 'External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019.

Q. 59. When ECB is partially converted into equity, should the remaining ECB amount comply with all the ECB guidelines?

Ans. Yes. The part conversion of ECB into equity will be freely permitted only when the part amount remaining as ECB complies with all the applicable ECB norms.

Q. 60. Can fixed deposits created out of ECB proceeds, pending utilization, be renewed after completion of maximum permitted period?

Ans. No.

Q. 61. Can a borrowing entity under investigation raise ECB ?

Ans. All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Category-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, the AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

Q. 62. Whether the information relating to ECB is available on RBI portal?

Ans. For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.

Q. 63. Who is responsible for compliance to guidelines of ECB?

Ans. The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA. The designated AD Category I bank is also expected to ensure compliance with applicable ECB guidelines by their constituents.

Q. 64. Who entity is treated as untraceable entity & which Standard Operating Procedure (SOP) is applicable to it?

Ans. Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

- a. Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorized by the AD bank for the purpose;
- b. Entities have not submitted Statutory Auditor's Certificate for last two years or more;

The followings actions are to be undertaken in respect of 'untraceable entities':

- a. File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;
- b. No fresh ECB application by the entity should be examined/processed by the AD bank;
- c. Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and
- d. No inward remittance or debt servicing will be permitted under auto route.

Q. 65. Can SBLC be issued by AD banks on behalf of their customers for availing short term trade finance from overseas lenders in foreign currency?

Ans. AD banks can issue SBLC on behalf of their customers for availing short term trade credit from overseas lenders in foreign currency subject to such SBLCs complying with the provisions contained in Department of Banking Regulation Master Circular No. DBR. No. Dir. BC.11/13.03.00/2015-16 dated July 1, 2015 on "Guarantees and Co-acceptances", as amended from time to time.

Q. 66. As per the new guidelines AD banks are required to report permissions granted for settlement of delayed import dues as per the applicable procedure. AD banks are also required to report permissions granted for settlement of delayed import dues by Regional offices of Reserve Bank on a similar basis. Is the mandated reporting only for approvals accorded for extensions up to one year/three years for non-capital/capital goods

respectively?

Ans. AD banks are required to report all permissions granted by the AD banks/Regional offices of Reserve Bank for settlement of delayed import dues irrespective of the tenures of extension sought.

PART II – Trade Credits (TCs)

Q. 1. What is “Trade Credit”?

Ans. Trade Credits (TC) refer to the credits extended by the overseas supplier, bank, financial institution and other permitted recognised lenders for maturity, as prescribed in this framework, for imports of capital/non-capital goods permissible under the Foreign Trade Policy of the Government of India. Depending on the source of finance, such TCs include suppliers’ credit and buyers’ credit from recognised lenders.

Q. 2. How the trade credit is framed?

Ans. The trade credit is framed as under.

Sr. No.	Parameters	FCY denominated TC	INR denominated TC
i	Forms of TC	Buyers’ Credit and Suppliers’ Credit.	
ii	Eligible borrower	Person resident in India acting as an importer.	
iii	Amount under automatic route	Up to USD 150 million or equivalents per import transaction for oil/gas refining & marketing, airline and shipping companies. For others, up to USD 50 million or equivalent per import transaction.	
iv	Recognised lenders	<p>1. For suppliers’ credit: Supplier of goods located outside India.</p> <p>2. For buyers’ credit: Banks, financial institutions, foreign equity holder(s) located outside India and financial institutions in IFSCs located in India.</p> <p>Note: Participation of Indian banks and non-banking financial companies (operating from IFSCs) as lenders will be subject to the prudential guidelines issued by the concerned regulatory departments of the Reserve Bank. Further, foreign branches/subsidiaries of Indian banks are permitted as recognized lenders only for FCY TC.</p>	
v	Period of TC	The period of TC, reckoned from the date of shipment, shall be up	

		to three years for import of capital goods. For non-capital goods, this period shall be up to one year or the operating cycle whichever is less. For shipyards / shipbuilders, the period of TC for import of non-capital goods can be up to three years.	
vi	All-in-cost ceiling per annum	Benchmark rate plus 250 bps spread.	
vii	Exchange rate	Change of currency of FCY TC into INR TC can be at the exchange rate prevailing on the date of the agreement between the parties concerned for such change or at an exchange rate, which is less than the rate prevailing on the date of agreement, if consented to by the TC lender.	For conversion to Rupee, exchange rate shall be the rate prevailing on the date of settlement.
viii	Hedging provision	The entities raising TC are required to follow the guidelines for hedging, if any, issued by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Such entities shall have a board approved risk management policy.	The 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.
ix	Change of currency of borrowing	Change of currency of TC from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

Q. 3. Whether trade credit can be raised unit or a developer in Special Economic Zone (SEZ) including Free Trade & Warehousing Zone (FTWZ)?

Ans. Yes, subject to compliance to para above.

Q. 4. What can be offered as security for Trade Credit?**Ans.**

1. Bank guarantees may be given by the ADs, on behalf of the importer, in favour of overseas lender of TC not exceeding the amount of TC. Period of such guarantee cannot be beyond the maximum permissible period for TC. TC may also be secured by overseas guarantee issued by foreign banks/overseas branches of Indian banks.
2. For the purpose of raising TC, the importer may also offer security of movable assets (including financial assets) / immovable assets (excluding land in SEZs) / corporate or personal guarantee for raising trade credit. ADs may permit creation of charge on security offered / accept corporate or personal guarantee, duly ensuring that:
 - i. there exists a security clause in the loan agreement requiring the importer to create charge, in favour of overseas lender / security trustee on immovable assets / movable assets / financial securities / issuance of corporate and / or personal guarantee;
 - ii. No objection certificate, wherever necessary, from the existing lenders in India has been obtained;
 - iii. such arrangement is co-terminus with underlying TC;
 - iv. In case of invocation, the total payments towards guarantee should not exceed the dues towards trade credit; and
 - v. Creation/ enforcement / invocation of charge shall be as per the provisions contained in Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, as amended from time to time, or any other relative Regulations framed under the Foreign Exchange Management Act, 1999 and should also comply with applicable FDI/FII/SEZ policy/ rules/ guidelines.

Q. 5. What are reporting requirements under trade credit?**Ans.**

Monthly reporting: AD Category I banks are required to furnish details of TCs like drawal, utilisation, and repayment of TC approved by all its branches, in a consolidated statement, during a month, in Form TC to the Director, Division of International Trade and Finance, Department of Economic Policy and Research, RBI, Central Office, Fort, Mumbai – 400 001 (and in MS-Excel file through email) so as to reach not later than 10th of the following month. Each TC may be given a unique identification number by the AD bank. Format of Form TC is available at Annex IV of Part V of Master Directions – Reporting under Foreign Exchange Management Act dated January 1, 2016, as amended from time to time.

Note: Suppliers' credit beyond 180 days and up to one year/three years from the date of shipment for non-capital/capital goods respectively, should also be reported by the AD banks. Further, permissions granted by the AD banks/Regional offices of Reserve Bank for settlement of delayed import dues in terms of paragraphs B.5 and C.2 of the Master Direction on Import of Goods and Services dated January 1, 2016, as amended from time to time, should also be reported by the AD banks as per the aforesaid procedure.

Quarterly reporting: AD Category I banks are also required to furnish data on issuance of bank guarantees for TCs by all its branches, in a consolidated statement, at quarterly intervals on the XBRL platform. For the above purpose AD banks may login to the site <https://secweb.rbi.org.in/orfsxbrl/> using their User name, Password and Bank code. For downloading the relevant form, AD banks may follow the link 'Download Returns Package' and download the form. After following the successive steps, AD banks may upload the file. For User name and Password, AD banks may write at fedcoecbd@rbi.org.in along with contact details. Clarification required, if any, may also be sent to the aforesaid email of the Reserve Bank and/ or may be communicated at Telephone No. 022-22601000 (extension-2715). Guide for using XBRL website is also available under the Help option on the same page. Format of this statement is also available at Annex V of Part V of Master Directions – Reporting under Foreign Exchange Management Act dated January 1, 2016, as amended from time to time.

Q. 6 Who is primarily responsible for ensuring adherence to TC & what is the role of AD Bank.

Ans. While the primarily responsibility of ensuring adherence to the TC policy lies with the importer, the ADs are also expected to ensure compliance with applicable parameters of the trade credit policy / provisions of Foreign Exchange Management Act, 1999 by their constituents. As the Reserve Bank has not prescribed any format or manner in which TC arrangements / loan agreements are to be documented, ADs may consider any document to satisfy themselves with the underlying TC arrangement. ADs should ensure that there is no double financing on account of these transactions between a unit or a developer in a SEZ including FTWZ for purchase of non-capital and capital goods within an SEZ including FTWZ or from a different SEZ including FTWZ. ADs should also ensure that for import of non-capital goods, the period of TC, as applicable, is lower of operating cycle or one year (three years for shipyards / shipbuilders).

PART III – Structured Obligations

Q. 1. Whether the guarantees issued by Non-Resident for domestic fund based or non-fund based facilities to Resident is considered under FEMA?

Ans. In cases where a Rupee facility which is either fund based or non-fund based (such as letter of credit / guarantee / letter of undertaking / letter of comfort) or is in the form of derivative contract by residents that are subsidiaries of multinational companies, is guaranteed by a non-resident (non-resident group entity in case of derivative contracts), there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The arrangements shall be with the following terms:

- I. The non-resident guarantor may discharge the liability by (a) payment out of rupee balances held in India or (b) by remitting the funds to India or (c) by debit to his FCNR(B)/NRE account maintained with an AD bank in India.
- II. In such cases, the non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR(B)/NRE account. However, in case the liability is discharged by payment out of Rupee balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.
- III. General Permission is available to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee.
- IV. In cases where the liability is met by the non-resident out of funds remitted to India or by debit to his FCNR(B)/NRE account, the repayment may be made by credit to the FCNR(B)/NRE/NRO account of the guarantor provided, the amount remitted/credited shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.
- V. AD Category I banks are required to furnish at quarterly interval details of guarantees availed of/ invoked, by all its branches, in a format specified by RBI (Annex I of Part X of Master Directions – Reporting under Foreign Exchange Management Act dated January 1, 2016, as amended from time to time), to the Chief General Manager-in-Charge, Foreign Exchange Department, External Commercial Borrowings Division, Reserve Bank of India, Central Office Building, 11th floor, Fort, Mumbai – 400 001 so as to reach the Department not later than 10th day of the month following quarter to which the data pertain to.