FED Master Direction No.5/2015-16

External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers

- ❖ Transactions on account of External Commercial Borrowings (ECB) and Trade Credit are governed by clause (d) of sub-section 3 of section 6 of the Foreign Exchange Management Act, 1999 (FEMA).

- ❖ Relatives means very close family of Individual , U/s 2(77) of Companies Act 2013.

- ❖ The term 'Infrastructure Sector' has the same meaning as given in the Harmonised Master List of Infrastructure sub-sectors approved by Government of India vide Notification F. No. 13/06/2009-INF dated March 27, 2012 as amended updated from time to time. [1]For the purpose of ECB, "Exploration, Mining and Refinery" sectors which are not included in the Harmonised list of infrastructure sector but were eligible to take ECB under the previous ECB framework (c.f. A.P. (DIR Series) Circular No. 48 dated September 18, 2013) will be deemed as in the infrastructure sector.

- ❖ ECBs are 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. The framework for raising loans through ECB (herein after referred to as the ECB Framework) comprises the following three tracks:

  Track I : Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.

  Track II : Long term foreign currency denominated ECB with minimum average maturity of 10 years.

  Track III : Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years.

Forms of ECB : The ECB Framework enables permitted resident entities to borrow from recognized non-resident entities in the following forms:

i. Loans including bank loans;
ii. Securitized instruments (e.g. floating rate notes and fixed rate bonds, nonconvertible, optionally convertible or partially convertible preference shares / debentures);
iii. Buyers' credit;
iv. Suppliers' credit;

iv. Foreign Currency Convertible Bonds (FCCBs);
vi. Financial Lease; and
vii. Foreign Currency Exchangeable Bonds (FCEBs)

Two routes. While the first six forms of borrowing, mentioned at 2.2 above, can be raised both under the automatic and approval routes, FCEBs can be issued only under the approval route.

- **Eligible Borrowers:** The list of entities eligible to raise ECB under the three tracks is set out in the following table.

Track - I	Track - II	Track - III
i. Companies in manufacturing and software development sectors. ii. Shipping and airlines companies. iii. Small Industries Development Bank of India (SIDBI). iv. Units in Special Economic Zones (SEZs). v. Export Import Bank of India (Exim Bank) (only under the approval route). vi. [5]Companies in infrastructure sector, Non-Banking Financial Companies - Infrastructure Finance Companies (NBFCIFCs), NBFCs-Asset Finance Companies (NBFC-AFCs), Holding Companies and Core Investment Companies (CICs)	i. All entities listed under Track I. ii. Companies in infrastructure sector. iii. Holding companies. iv. Core Investment Companies (CICs). v. Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) coming under the regulatory framework of the Securities and Exchange Board of India (SEBI).	i. All entities listed under Track II. ii. All Non-Banking Financial Companies (NBFCs) [6]coming under the regulatory purview of the Reserve Bank. iii. NBFCs-Micro Finance Institutions (NBFCs-MFIs), Not for Profit companies registered under the Companies Act, 1956/2013, Societies, trusts and cooperatives (registered under the Societies Registration Act, 1860, Indian Trust Act, 1882 and State-level Cooperative Acts/Multilevel Cooperative Act/State-level mutually aided Cooperative Acts respectively), Non-Government Organisations (NGOs) which are engaged in micro finance activities[1]. iv. Companies engaged in miscellaneous services viz. research and development (R&D), training (other than educational institutes), companies supporting infrastructure, companies

		providing logistics services. v. Developers of Special Economic Zones (SEZs)/ National Manufacturing and Investment Zones (NMIZs)

- **Recognised Lenders/Investors:** The list of recognized lenders / investors for the three tracks will be as follows:

Track-I	Track-II	Track-III
i. International banks. ii. International capital markets. iii. Multilateral financial institutions (such as, IFC, ADB, etc.) / regional financial institutions and Government owned (either wholly or partially) financial institutions. iv. Export credit agencies. v. Suppliers of equipment. vi. Foreign equity holders. vii. Overseas long term investors such as: a. Prudentially regulated financial entities; b. Pension funds; c. Insurance companies; d. Sovereign Wealth Funds; e. Financial institutions located in International Financial Services Centres in India viii. Overseas branches / subsidiaries of Indian banks	All entities listed under Track I but for overseas branches / subsidiaries of Indian banks.	All entities listed under Track I but for overseas branches / subsidiaries of Indian banks. In case of NBFCs-MFIs, other eligible MFIs, not for profit companies and NGOs, ECB can also be availed from overseas organisations[3] and individuals[4]

- ✓ *Overseas branches / subsidiaries of Indian banks can be lenders only under Track I.*

- ✓ *Individual lender has to obtain a certificate of due diligence from an overseas bank indicating that the lender maintains an account with the bank for at least a period of two years. Other evidence /documents such as audited statement of account and income tax return.*

❖ **All-in-Cost (AIC):** The all-in-cost requirements for the three tracks will be as under:

Track-I	Track-II	Track-III
For ECB with minimum average maturity period of 3 to 5 years - 300 basis points per annum over 6 month LIBOR or applicable bench mark for the respective currency. b. For ECB with average maturity period of more than 5 years – 450 basis points per annum over 6 month LIBOR or applicable bench mark for the respective currency. ii. 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.	i. The maximum spread over the benchmark will be 500 basis points per annum. ii. Remaining conditions will be as given under Track I.	The all-in-cost should be in line with **the market conditions.**

❖ **End-use prescriptions:** The end-use prescriptions for ECB raised under the three tracks are given in the following table:

Track-I	Track-II	Track-III
i. ECB proceeds can be utilised for capital expenditure in the form of: a. Import of capital goods including payment towards import of services, technical know-how and license fees, provided the same are part of these capital goods; b. Local sourcing of capital goods; c. New project; d. Modernisation /expansion of existing units; e. Overseas direct investment in Joint ventures (JV)/ Wholly owned subsidiaries (WOS); f. Acquisition of shares of public sector undertakings at any stage of disinvestment under the disinvestment programme of the Government of India; g. Refinancing of existing trade credit raised for import of capital goods; h. Payment of capital goods already shipped / imported but unpaid; i. Refinancing of existing ECB provided the residual maturity is not	1. The ECB proceeds can be used for all purposes excluding the following: i. Real estate activities ii. Investing in capital market iii. Using the proceeds for equity investment domestically; iv. On-lending to other entities with any of the above objectives; v. Purchase of land 2. Holding companies can also use ECB proceeds for providing loans to their infrastructure SPVs.	NBFCs can use ECB proceeds only for: a. 9 On-lending for any activities, including infrastructure sector as permitted by the concerned regulatory department of RBI; b. providing hypothecated loans to domestic entities for acquisition of capital goods/equipment; and c. providing capital goods/equipment to domestic entities by way of lease and hire purchases 2. Developers of SEZs/ NMIZs can raise ECB only for providing infrastructure facilities within SEZ/ NMIZ. 3. NBFCs-MFI, other eligible MFIs, NGOs and not for profit companies registered under the Companies Act, 1956/2013 can raise ECB only for on-lending to selfhelp groups or for microcredit or for bonafide micro finance activity including capacity building. 4. For other eligible entities under this track, the ECB proceeds can be used for all purposes excluding the following: i. Real estate activities ii. Investing in capital market iii. Using the

reduced. ii. SIDBI can raise ECB only for the purpose of on-lending to the borrowers in the Micro, Small and Medium Enterprises (MSME sector), where MSME sector is as defined under the MSME Development Act, 2006, as amended from time to time[5]. iii. Units of SEZs can raise ECB only for their own requirements[5]. iv. Shipping and airlines companies can raise ECB only for import of vessels and aircrafts respectively[5]. v. ECB proceeds can be used for general corporate purpose (including working capital) provided the ECB is raised from the direct / indirect equity holder or from a group company for a minimum average maturity of 5 years. vi. [7]NBFC-IFCs and NBFCs-AFCs can raise ECB only for financing infrastructure. vii. [8]Holding Companies and CICs shall use ECB proceeds only for on lending to infrastructure Special Purpose Vehicles (SPVs). viii. ECBs for the following purposes will be considered only under the approval route[5]: a. Import of second hand goods as per the Director General		proceeds for equity investment domestically; iv. On-lending to other entities with any of the above objectives; v. Purchase of land 12

of Foreign Trade (DGFT) guidelines; b. On-lending by Exim Bank.		

- ✓ The individual limits of ECB as set up , $ 100 to 750 Million , that can be raised by eligible entities under the automatic route per financial year.

- ✓ Change of currency of ECB from one convertible foreign currency to any other convertible foreign currency as well as to INR is freely permitted. Change of currency from INR to any foreign currency is, however, not permitted.

- ✓ 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.

- ✓ 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

- ✓ **Loan Registration Number (LRN):** Any draw-down in respect of an ECB as well as payment of any fees / charges for raising an ECB should happen only after obtaining the LRN from RBI. To obtain the LRN, borrowers are required to submit duly certified Form 83, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank.

- ✓ In case of partial or full conversion of ECB into equity , to be reported to the concerned Regional Office of the Foreign Exchange Department of RBI in Form FC-GPR

❖ **Framework for issuance of Rupee denominated bonds overseas**

3.1 Form of borrowing :

The framework for issuance of Rupee denominated bonds overseas enables eligible resident entities to issue only plain vanilla Rupee denominated bonds issued overseas in a Financial Action Task Force (FATF) compliant financial centres. The bonds can be either placed privately or listed on exchanges as per host country regulations.

3.2 Available routes and limits of borrowing :

Eligible entities can issue Rupee denominated bonds overseas both under the automatic route and the approval route. Under the automatic route, the amount of borrowing will be up to [14]INR 50 billion per financial year. Cases beyond this limit will require prior approval of the Reserve Bank under the approval route. [15]Issuance of Rupee denominated bonds overseas will be within the aggregate limit of INR 2443.23 billion for foreign investment in corporate debt.

3.3 Parameters of borrowing by issuance of Rupee denominated bonds:

Various parameters for raising loan under the Framework for issuance of Rupee denominated bonds overseas are given below:

3.3.1 Minimum Maturity :

The bonds shall have minimum maturity of [16]three years. The call and put option, if any, shall not be exercisable prior to completion of minimum maturity.

3.3.2 Eligible borrowers :

Any corporate or body corporate is eligible to issue such bonds. REITs and INVITs coming under the regulatory framework of the SEBI are also eligible.

3.3.3 Recognised Investors :
The Rupee denominated bonds can **only** be issued in a country **and** can **only** be subscribed by a resident of a country:

i. that is a member of Financial Action Task Force (FATF) or a member of a FATF-Style Regional Body ; **and**

ii. 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 Securities and Exchange Board of India (SEBI) for information sharing arrangements; **and**

iii. 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.

Indian banks shall not have access to these bonds but, subject to applicable prudential norms, can act as arranger and underwriter. In case of an Indian bank underwriting an issue, its holding cannot be more than 5 per cent of the issue size after 6 months of issue.

3.3.4 All-in-Cost :

The all-in-cost of borrowing by issuance of Rupee denominated bonds should be commensurate with prevailing market conditions.

3.3.5 End-use Prescriptions :

The proceeds of the borrowing can be used for all purposes except for the following:

i. Real estate activities other than development of integrated township / affordable housing projects;

ii. Investing in capital market and using the proceeds for equity investment domestically;

iii. Activities prohibited as per the foreign direct investment guidelines;

iv. On-lending to other entities for any of the above purposes; and

v. Purchase of Land

3.3.6 Exchange Rate for conversion :

The exchange rate for foreign currency –Rupee conversion shall be the market rate on the date of settlement for the purpose of transactions undertaken for issue and servicing of the bonds

3.3.7 Hedging :

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.

3.3.8 Leverage Ratio :

The borrowing by financial institutions under the Framework shall be subject to the leverage ratio prescribed, if any, by the sectoral regulator as per the prudential norms.

- **Trade Credit** :
  Trade Credits refer to the credits extended by the overseas supplier, bank and financial institution for maturity up to five years for imports into India. Depending on the source of finance, such trade credits include suppliers' credit or buyers' credit. Suppliers' credit relates to the credit for imports into India extended by the overseas supplier, while buyers' credit refers to loans for payment of imports into India arranged by the importer from overseas bank or financial institution. Imports should be as permissible under the extant Foreign Trade Policy of the Director General of Foreign Trade (DGFT).

- ✓ **Maturity prescription :** Maturity prescriptions for trade credit are same under the automatic upto USD 20 million or equivalent per import transaction and approval routes beyond automatic route value . While for the non-capital goods, the maturity period is up to one year from the date of shipment or the operating cycle whichever is less, for capital goods, the maturity period is up to five year from the date of shipment. For trade credit up to five years, the ab-initio contract period should be 6 (six) months. Maximum cost 6 months LIBOR+350 basis point . No roll-over/extension will be permitted beyond the permissible period.

- **Guarantee for Trade Credit :**
  For import of capital goods, the period of guarantee/ Letters of Credit/ Letters of Undertaking by AD can be for a maximum period up to three years.

- **Borrowing in foreign currency by persons other than an authorised dealer** :
  For imports : An importer in India may, for import of goods into India, avail of foreign currency credit for a period not exceeding six months extended by the overseas supplier of goods, provided the import is in compliance with the Export Import Policy of the Government of India in force. **Borrowing by resident individual**: An individual resident in India may borrow a sum not exceeding US$ 250,000/- or its equivalent from **his close relative outside India**, subject to the conditions that:

  a. the minimum maturity period of the loan is one year;

  b. the loan is free of interest; and

  c. the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account of the non-resident lender.