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Liberalisation of External Commercial Borrowing and Trade Credit Policy

Availing ECB for repayment of rupee loans and/or fresh rupee capital expenditure

In June 2012, the Reserve Bank of India (RBI) had permitted companies in manufacturing and infrastructure sector¹, subject to prescribed conditions, to avail External Commercial Borrowing (ECB) for repayment of rupee loans and/or fresh rupee capital expenditure under the approval route. The RBI has liberalised following conditions in relation to the aforesaid ECB window:

¹ Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) roads including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.

1. Maximum permissible limit of ECB (percentage terms)

- Earlier, the limit prescribed was 50% of the average annual export earnings realised during the past three financial years.
- Maximum permissible limit has been enhanced to higher of the following:
 - 75% of the average foreign exchange earnings realized during the immediate past three financial years; or
 - 50% of the highest foreign exchange earnings realized in any of the immediate past three financial years, whichever is higher.

2. Maximum permissible limit of ECB (monetary terms)

- While an overall ceiling for ECB under this scheme was prescribed at USD 10 billion, no individual ceiling was specified. The RBI has now imposed a cap of USD 3 billion for an individual company or group, as a whole, availing ECB under this scheme.
- Incidentally, the term 'group' has not been defined separately for the purpose of this facility. It may be relevant to note that in the A.P. (DIR Series) Circular No. 29 dated 26 September, 2011, the concept of group company was considered by the RBI, in the context of ECB, as two or more companies being subsidiaries of the same parent. It may be possible that the RBI may want to resort to the same interpretation in this context as well.

3. Special purpose vehicles (SPVs) not having prescribed track record

- SPVs which have completed at least one year of existence from the date of incorporation and does not have sufficient track record/past performance for three financial years can also avail ECB up to 50% of the annual export earnings realised during the past financial year.

All other conditions for this scheme notified vide A.P. (DIR Series) Circular No. 134 dated 25 June, 2012 remain unchanged.

Source: A.P. (DIR Series) Circular No. 26 dated 11 September, 2012

ECB for replacing bridge finance availed by infrastructure companies

- Presently, infrastructure companies (above) are allowed to import capital goods by availing of short-term credit (including buyers/suppliers' credit) in the nature of bridge finance under the approval route provided the bridge finance is replaced by an ECB with prior approval of the RBI.

- Thus, it required RBI approval at two stages, i.e. while availing bridge finance and while replacing it with ECB.
- The RBI has now liberalised the ECB policy to permit replacement of bridge finance by an ECB under the automatic route, provided it is refinanced before the maximum permissible period of trade credit and the bill of entry is available for verification.

Source: A.P. (DIR Series) Circular No. 27 dated 11 September, 2012

Trade credits for imports of capital goods by infrastructure sector

- As per the extant guidelines, all companies can avail trade credits up to three years for import of capital goods.
- The RBI has permitted companies in the infrastructure sector (above) to avail trade credit up to a maximum period of five years for import of capital goods subject to the following:
 - Minimum period of trade credit must be at least fifteen months. However, it should not be in the nature of short-term roll overs; and
 - AD banks would not be permitted to issue letters of credit/guarantees/letter of undertaking/letter of comfort in favour of overseas supplier, bank and financial institution for the extended period beyond three years.

All-in-cost ceilings shall remain at 350 basis points over six months LIBOR for the respective currency.

Source: A.P. (DIR Series) Circular No. 28 dated 11 September, 2012

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