

FEMA Alert

Borrowing and Lending between persons resident in India and persons resident outside India

The Reserve Bank of India (RBI) has issued a new regulation superceding and combining the existing regulations for borrowing and lending in foreign currency and Indian rupees and regulations for issuance of foreign currency convertible bonds. The revised regulations further liberalises the External Commercial Borrowings ('ECB') Regulations.

It is important to note that the revised regulations provide a statutory backing to RBI to prescribe operational guidelines (which are yet to be announced) in consultation with Government of India. These regulations are to be read in conjunction with the instructions and circulars issued by RBI from time to time.

The key amendments under the revised regulations are summarised as under:

a. Borrowing in Foreign Currency and Indian Rupees

- i. A resident Indian individual studying abroad is now permitted to raise loans outside India upto USD 2,50,000 or its equivalent for payment of education fees abroad and maintenance. Currently, a student studying abroad is permitted to change his residential status to Non-resident under FEMA on the basis of uncertainty on his period of stay overseas and as a Non-resident is permitted to borrow funds abroad.

ii. Amendments in Trade Credit

Provisions	Extant Regulation	Revised Regulation
Limits per Import Transaction	USD 20 Million	USD 50 Million
Maximum Maturity for Import of Capital Goods	5 Years	3 years
Cost Ceiling	3.5% over 6 month LIBOR or equivalent	2.5% over 6 month LIBOR or equivalent

- iii. An authorised dealer bank is now permitted to raise ECBs.

iv. Amendments in ECBs regulations

Provisions	Extant Regulation	Revised Regulation
Eligible Borrowers	Specified entities such as companies engaged in manufacturing and software development sectors, units in SEZs, Infrastructure companies, Start-ups, etc	All entities eligible to receive foreign direct investment including start-ups.
Minimum Average Maturity	3-10 years	3 years

Provisions	Extant Regulation	Revised Regulation
Lenders	International Banks, International Capital Markets, Pension Funds, Insurance Companies, foreign equity holders, etc	Any Resident of Financial Action Task Force or International Organisation of Securities Commission compliant country
All-in-cost	Foreign Currency ECB: 450 basis points over 6 month LIBOR Indian Rupee ECB: 450 basis points per annum over prevailing yeild of GOI securities	Remains unchanged
End Uses Restrictions	Specified classes of transactions restricted such as investment in real estate/ purchase of land except affordable housing, construction and development of SEZ and industrial parks/integrated townships, investment in equity and capital markets, working capital/ general corporate purposes, repayment of rupee loans and on-lending for some of above activities	Funds cannot be used for: <ul style="list-style-type: none"> • Business of chit fund or Nidhi Company; • Investment in capital market including margin trading and derivatives; • Agricultural or plantation activities; • Real estate activity* or construction of farm houses; and • Trading in Transferrable Development Rights <p>RBI can further prescribe additional end use restrictions</p>
Individual Limits per year	Generally, upto USD 500 million or equivalent. For certain special classes of borrowers, USD 100 million to USD 750 million or equivalent (USD 3 million or equivalent in case of start-ups)	Up to USD 750 million or equivalent (USD 3 million or equivalent in case of start-ups)

v. Currently, under the FDI Regulations, Real Estate Business has been defined as under:

“Real estate business” means dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships;

Explanation:

a. Investment in units of Real Estate Investment Trusts (REITs) registered and regulated under the Securities and Exchange Board of India (REITs) regulations 2014 shall also be excluded from the definition of “real estate business”.

b. Earning of rent income on lease of the property, not amounting to transfer, will not amount to real estate business.

Real estate broking services shall be excluded from the definition of “real estate business”.

The revised Borrowing and Lending regulations have defined Real Estate Activity as under:

“Real Estate Activity” means any 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 development of integrated township, purchase/ long term leasing of industrial land as part of new project/modernisation or expansion of existing units or any activity under ‘infrastructure subsectors’ as given in the Harmonised Master List of Infrastructure sub-sectors approved by the Government of India vide Notification F. No. 13/06/2009-INF, as amended/ updated from time to time.

This definition is in variance with the definition under the FDI regulations in respect of renting of property.

- vi. Any borrowings under the extant regulations can be continued as permitted up to the due date of repayment.
- vii. Any foreign investment in the nature of debt not covered under the Revised Framework is required to comply with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India).
- viii. Erstwhile, a resident individual was permitted to borrow in:
 - 1. Foreign Currency from a his/her relatives outside upto USD 250,000
 - 2. Indian Currency on non-repatriation basis from NRI or PIO

The above was subject to a subject to restrictions on loan duration, rate of interest and others.

However, under the revised regulations the terms and conditions are yet to be prescribed.

b. Lending Regulations

There are no major amendments for the lending in Foreign Currency and Indian Rupees.

- c. The revised regulations also state that a specific hybrid instruments regulation will be issued for hybrid instruments such as optionally convertible debentures which are presently governed under the ECB regulations.

In case of any clarifications, you may reach us at

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