

NOTE ON KEY CHANGES PROPOSED UNDER THE NEW 'ECB' REGIME

Sr. No.	Parameter	Earlier Regime	New Regime	Effect
1.	Eligible Borrower	Only entities eligible for Foreign Direct Investment (“FDI”) effectively body corporate like companies.	Any entity (other than an individual) incorporated, established or registered under law.	This is a welcome change which will allow the raising of external commercial borrowings (“ECBs”) by different kind of entities including Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs).
2.	Recognised Lender	Person resident of FATF or IOSCO compliant country.	A person resident outside India including branches of an RBI regulated lender in IFSC and / or outside India.	Simplified and wider definition of lender. This will increase lender base for the eligible borrowers.
3.	All in Cost	Benchmark rate plus 500 bps spread.	The cost of borrowing shall be in line with prevailing market conditions, subject to the satisfaction of the designated authorised dealer Category I bank (“ Designated AD Bank ”).	No hardcoded cap in all in cost. Parties to ECBs can take the decision keeping in mind the prevailing market conditions.
4.	Penal Interest	Not more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount.	Prepayment charge / penal interest, if any, for default or breach of covenants shall be in line with prevailing market conditions, subject to satisfaction of the Designated AD Bank.	No hardcoded cap for penal interest. Parties to ECBs can take the decision keeping in mind the prevailing market conditions.
5.	Borrowing Limit	Up to USD 750 million.	Up to the higher of outstanding ECB up to USD 1 billion; or total outstanding	Higher upper limit for ECB borrowings.

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			<p>borrowing (external and domestic) up to 300 per cent of net worth as per the last audited balance sheet.</p> <p>Borrowing limit is not applicable on eligible borrowers that are regulated by financial sector regulators viz. non banking financial companies (“NBFCs”).</p>	
6.	Minimum Average Maturity Period (“MAMP”)	Generally, MAMP for all ECBs was 3 years but for manufacturing sectors / general corporate sector / working capital purposes / repayment of rupee loans different MAMP was provided.	For all ECBs, MAMP is 3 years, except manufacturing sector up to USD 50 million, which can be between 1 to 3 years.	Simplified MAMP requirement without depending on the underlying end use (except in case of manufacturing sector) effectively now for general corporate sector / working capital purposes / repayment of rupee loans.
7.	End Use Restrictions	<ul style="list-style-type: none"> (a) Real estate activities; (b) Investment in capital market; (c) Equity investment; (d) Working capital purposes (for average maturity of less than 10 years / 5 years); (e) General corporate purposes (for average maturity of less than 10 years / 5 years); 	<p>No separate list of negative end use in ECB schedule has been provided. However, a new regulation has been introduced for the prohibited end use which includes the following:</p> <ul style="list-style-type: none"> (a) Business of Chit funds / Nidhi Company; (b) Agricultural or plantation activities, except activities/sectors permitted for FDI; 	<ul style="list-style-type: none"> (a) Acquisition finance is now allowed; (b) No restrictions as regards general corporate purpose / repayment of rupee loans; (c) While on-lending is allowed by financial sector (including NBFCs) / group entities however, it seems restriction has been put to utilise the

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		<p>(f) Repayment of Rupee loans (for average maturity of less than 10 years / 7 years); and</p> <p>(g) On-lending to entities for the above activities, other than ECBs raised by NBFCs in accordance with the MAMP requirement.</p>	<p>(c) Real estate business or construction of farmhouses, except - (i) Activities / sectors permitted for FDI, and (ii) Purchase / long-term leasing of industrial land as part of new project / modernisation or expansion of existing units;</p> <p>(d) Trading in Transferrable Development Rights (TDR);</p> <p>(e) On-lending, except by - (i) A person resident in India whose lending business is regulated by the RBI, and (ii) A person resident in India, i.e., a company or a body corporate established under a Central Act / State Act lending to its group entity,</p> <p>Aforementioned exceptions are not applicable to on-lending which are for prohibited end-use or to a person who is not an eligible borrower (for the borrowing from the person resident outside India whose proceeds are being on-lent); and</p>	<p>proceeds of ECB for on-lending of ECB to individuals. Juris Corp will be making comments and seeking clarity in this regard; and</p> <p>(d) Investment in primary market instruments.</p>

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			(f) Transacting in listed/unlisted securities, except for - (i) Investment in terms of the overseas investment norms, (ii) Merger, amalgamation, arrangement, or acquisition in accordance with the applicable Indian law, and (iii) Investment in primary market instruments issued by non-financial entities for on-lending as in (e) above.	
8.	Reporting	Any changes made in the ECB parameters had to be reported 7 days from the said change being made effective.	The timeline of reporting such change in the new regime is now thirty calendar days from the date of such change.	Extension in timeline of filing revised Form ECB.

Juris Corp will be happy to conduct a short presentation / discussion with your organisation to discuss the proposed changes in the new ECB regime.

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