

External Commercial Borrowings & Trade Credits



CA. Mukesh K. Bansal

B. Com, FCA

CONTENTS

- Imports payments
- Trade Credits
- External Commercial Borrowings
- Loans from NRIs

TRADE CREDITS

IMPORTS PAYMENTS GENERAL CREDIT

- There is a general payments period of Six months from the date of shipment.
- No additional procedural requirements other than normal payments of imports.

Import of Books:

- Remittances against import of books without any time limit subject to interest rate regulations.

TRADE CREDITS:

Terms

- Suppliers Credits
- Deferred Payments/ Hire Purchase
- Having a total payments/ credit period more than six months but less than three years.

Sources of Trade Credits

- Supplier Credits: Provided by the direct overseas suppliers
- Buyer Credits: Arranged by the importer from outside India from Banks, Financial Institutes, and Foreign Holding Company.

.....Continued

TRADE CREDITS

Amount and Maturity:

AD is authorised to approve trade credits as per following limits :

Type of Imports	Max Amount	Max. Maturity Period
Capital Goods	USD 20 Millions	Less than 3 years
Other than Capital goods	USD 20 Millions	1 Year

Note :

- Imports items should be permissible under the EXIM policy
- No roll over/ Extension permitted by the AD.
- Maximum amount is for per import transaction.

Maximum All in cost Ceilings (over 6 month Libor)

- At present it is 6 month LIBOR rate of respective currency plus 350 basis points.
- All in costs includes all costs related to trade credits including arranger fees, professional fees, upfront fees, handling and processing charges, out of pocket and legal expenses.

.....Continued

TRADE CREDITS

Guarantee:

AD can provide Guarantees for importer to overseas suppliers or FI subject to termination period of trade credits period.

EXTERNAL COMMERCIAL BORROWINGS:

Meaning

Any loan or credit facilities having maturity period of three years and above shall be treated as ECB and subject matter of ECB guidelines.

ECB can be availed under automatic route subject to detailed guidelines in respect of

- Eligible Borrower
- Recognised Lender
- Maximum ECB amount and maturity period
- All in ceiling cost
- End Use

All cases beyond the above guidelines falls in Approval route.

EXTERNAL COMMERCIAL BORROWINGS:

Eligible Borrowers:

1. Companies including NBFC- IFC, Except finance intermediaries such as banks, FI , NBFC etc.
2. SEZ units (no transfer/ lend to sister concern or DTA units)
3. SIDBI for relending to MSME sector
4. NGO engaged in Micro finance activities*
5. Micro Finance Institutions

*NGO engaged in Micro financing should have minimum three years borrowing relationship with any schedule bank dealing in Foreign Exchange

*Fit and proper status certificate of Board from AD bank.

*Individual, Trusts and NPO are not eligible for ECB

Eligible Lenders

ECB can be raised from internationally recognised sources, such as

1. International banks and financial institutions
2. Multilateral financial institutions/ Regional financial institutions and government owned development financial institutions
3. International capital markets
4. Export credit agencies
5. Suppliers of equipment's

EXTERNAL COMMERCIAL BORROWINGS:

Eligible Lenders

6. Foreign Collaborators
7. Foreign Equity holders

*NGO engaged in Micro finance, can raise ECB from 1, 2, 4, 5 and **Individuals**

*Individual lender are subject to guidelines of Financial Action Task Force (FATF) and due diligence certificate from overseas bankers.

Eligibility of Foreign Equity Holders

FEH have to have minimum holding of paid up capital to be eligible as recognised lenders under automatic route.

- FEH should be holding minimum 25% of paid up capital
- For ECB more than USD 5 million, apart from above holding, ECB liability- Equity ratio should not exceed 4:1
- ECB- Equity ratio in respect of specific lender
- For ECB liability Existing ECB and proposed ECB both shall be calculated from the same lender
- For calculation of equity apart from paid up capital, free reserve and surplus, **share premium brought in** by the lender equity holder shall be considered.
- Calculations as per last audited balance sheet.

EXTERNAL COMMERCIAL BORROWINGS:

Amount and Maturity

- Maximum amount of ECB can be raised by the Companies (except service sector) is USD 750 Million during a financial year.
- For service sector Companies (Hotel, Hospital and Software) maximum amount is USD 200 million during a financial year. (not to be used for acquisition of Land)
- NGO in micro financing and MFI can raise UDS 10 Million during a financial year.
- ECB upto USD 20 Million during a financial year can have minimum maturity period of 3 years
- ECB more than USD 20 Millions and upto USD 750 Million during a financial year should have minimum maturity period of 5 years.

Maximum All in cost Ceilings (over 6 month Libor)

- At present it is 6 month LIBOR rate of respective currency plus 350 basis points for ECB upto Five years.
- 6 month LIBOR rate plus 550 basis points for ECB having maturity period more than Five years
- All in costs includes all costs related to trade credits including arranger fees, professional fees, upfront fees, handling and processing charges, out of pocket and legal expenses.
- Payments of withholding taxes in Indian Rupees is not included in all in ceiling cost.

.....Continued

EXTERNAL COMMERCIAL BORROWINGS:

END USE

Permissible End use:

- Investments in capital goods, expansion and modernisation of existing projects new projects, Infrastructure sector
- Overseas direct investments in WOS/ JV by Indian Companies
- First stage disinvestment process and in mandatory second stage offer to Public for PSU disinvestment programme of PSU shares.
- Payments of Interest during construction (IDC) by the infrastructure Companies subject to interest being part of project costs.
- For lending to self help group or for micro credits by the NGO in micro financing.
- Infrastructure financing companies (IFC) for relending to infrastructure projects.
- Capital expenditures for operations and maintenance of Toll Road and highways provided these expenses are form of original project cost.

End use not permitted:

- For relending or investments in capital market
- For acquiring a company or part thereof in India
- Investments in special purpose vehicle (SPV) and money market mutual funds (MMMMF)
- For Real Estate sector
- For working capital, general corporate purpose and repayments of existing rupees loans.

.....Continued

EXTERNAL COMMERCIAL BORROWINGS:

Guarantees and Securities

- Issuance of Guarantees, standby letter of credits, letter of undertakings or comfort by banks, FI and NBFC from India, in relation to ECB is not permitted.
- Securities by the borrower for raising ECB may be provided to lender. Securities may be in the forms of pledging/creating charges over immovable assets or financial assets such as shares, issuance of personal or corporate guarantees.
- Borrower is required to obtain No objection certificate from AD Banker for creating any charge or pledging any assets.

NOC by AD Banker for securities

Before issuing such NOC, concerned AD Bank should ensure that:

- ECB is as per ECB regulations and guidelines
- Existence of security clause in loan agreement
- Proper loan agreement and signed by both parties
- Loan Registration Number (LRN) from RBI should be obtained.
- NOC shall be provided for resident ECB borrowers
- A certificate from Statutory auditors for proposed end use.

.....Continued

EXTERNAL COMMERCIAL BORROWINGS:

NOC by AD Banker for securities

NOTE: NOC on the charges of assets is issued only for specific FEMA purpose and under FEMA guidelines. If there are other regulations under which one need other approval or permission from any other authorities, those conditions need to be fulfilled before any charges are being filled. Also NOC by AD does not mean regularization of any other irregularities or default on the assets or borrower under FEMA or any other provisions.

Generally NOC is provided with following conditions

- Charges shall be created in favour of the lender or security trustees
- NOC shall be provided for resident ECB borrowers
- Period of charges shall be co terminus with the maturity period of ECB
- There should not be any meaning or arrangement by these charges that overseas lender has any rights to acquire the immovable properties in India.
- In case of enforcement of securities, immovable properties shall be only sold to resident Indian and sale proceeds shall be used to adjustment of ECB
- In case of enforcement of securities involving shares of the Company, transfer of shares has to be according to the FDI policy (Sector specific FDI CAP)
- A certificate from statutory auditors for proposed end use.
- Specific board resolutions for Corporate Guarantees with having all specific details of lender, ECB amount and Guarantee Amount. (Ensure MOA/AOA of the Company for corporate guarantees)
- Specific request from individual for personal guarantees.

.....Continued

EXTERNAL COMMERCIAL BORROWINGS:

Procedure and Reporting

- Entering into loan agreement with lender without any prior approval from RBI
- Filing of Form 83 for Loan registration Number in Duplicate and certified by CS or CA.
- Loan registration number (LRN) before drawing done the ECB
- ECB fund may be brought into India before LRN but AD will allow withdrawing only after LRN
- Application in form ECB for raising ECB in approval route.
- Monthly reporting in ECB 2 to RBI.

Others

- Prepayments upto USD 500 Million under automatic route subject to minimum three year maturity period. (more than USD 500 M in approval route)
- Refinancing of existing ECB may be done at lower cost and original maturity period should be maintained. (otherwise in approval route)
- ECB raised to local rupees expense need to remit into India immediately, ECB funds raised for foreign exchange expenses, may be parked in foreign exchange account abroad, pending utilisation of funds.
- Conversion of ECB into Equity Capital is allowed subject to FDI policy, guidelines of sectorial cap and prescribed pricing guidelines
- Reporting in Form FCGPR and ECB 2.

.....Continued

LOANS FROM NRI

Loans from NRI

- Loans from Close Relatives
- Rupees borrowings by Indian Companies through non convertible debentures
- Rupees borrowings by person resident in India from NRI/ PIO

Loans from close relative

- Resident Indian can avail a loan upto USD 250000 from his close relative from out of India, subject to conditions
- Loan is interest free
- Minimum maturity period is One Year
- Receipt through inward remittances from abroad or from debit of NRE account to be used for personal or business purpose and not to be used for agriculture/ plantation, immovable property investments, investments in Indian Company through shares or debentures or for relending purpose.

Rupees borrowings by Indian Companies through non convertible debentures

Companies has general permission to borrow from NRI OR PIO by way of investments in NCD on repatriation or non repatriation basis, with following conditions :

- Issue of NCD through public offer
- Maximum rate of interest PLR of SBI plus 300 Basic points
- Minimum maturity period is 3 years

.....Continued

LOANS FROM NRI

Rupees borrowings by Indian Companies through non convertible debentures

- Company is not or shall not carry business of agriculture, plantation, real estate business, nidhi or chit fund Company for repatriation basis
- Amount of investment should be received from outside India through normal banking channels or from NRE account with AD.
- Interest and maturity proceeds of NCD issued on non repatriation basis shall be credited in NRO account of the investor.

Reporting and Compliance requirements

Company shall file full details with RBI within 30 days of receipts of remittances :

- A list of names and address of NRI/ PIO who have remitted funds for investment in NCD, on repatriation and/ or non repatriation basis
- Amount and date of receipts of remittances and its rupee equivalent
- Name and address of authorised dealer through whom the remittances have been received.

Within 30 days of issue of NCD

- A list of names and address of NRI/ PIO to whom NCD are issued on repatriation or non repatriation basis.
- A certificate from the CS of the borrowing company that all provisions of Act and regulations in respect of issuance of NCD are complied with.

.....Continued

LOANS FROM NRI

Rupees borrowings by person resident in India from NRI/ PIO

A person resident in India (other than Company) can borrow from NRI/ PIO on non repatriation basis, subject to following conditions :

- Amount of loan shall be remitted out of India through normal banking channel or from the NRE/ NRO account maintained with AD
- The period of loan shall not exceed three years
- Maximum rate of interest is prevailing bank rate plus two percentage
- Payments of interest and repayments of loan shall be made to NRO account
- Amount borrowed shall not be allowed to repatriated outside India.

Deposits by Indian concerns from NRI

- Proprietorship concerns/ firms/ Companies/ NBFC may accepts deposits from NRI on non repatriation basis, on private placement basis
- NBFC should be registered with RBI and should have required credit rating
- Maturity period shall not exceed 3 years
- Interest rates as per maximum ceiling rate as prescribed in acceptance of deposit rules, 1975
- Amount of deposit shall be received only from the NRO account of the NRI (**No remittances from NRE or other FE bank account**)
- Amount of deposit shall not be used for relending (except NBFC), agriculture, planation, real estate business
- Amount of deposit shall not be repatriated out of India.



THANK YOU

MUKESH K BANSAL, B.COM,FCA

9540022533

Mukbansal80@gmail.com