

Corpsec Hotline

December 17, 2009

EXTERNAL COMMERCIAL BORROWING POLICY AMENDED

The Reserve Bank of India ("RBI") has brought in changes to the existing policy governing External Commercial Borrowings ("ECB"). RBI has amended the existing ECB policy vide **RBI/2009-10/252 A.P. (DIR Series) Circular No.19, dated December 9, 2009** (the "**Amendment**"). With regards to the same, this hotline would cover the scenario pre and post the Amendment and the implications of the Amendment.

All-in-costs ceilings now applicable to approval route also:

The existing policy governing ECB under the approval route permits eligible borrowers to raise funds as ECB from recognized lenders at a mutually agreed rate. This relaxation is available until December 31, 2009 only. The RBI has decided to do away with this relaxation from January 01, 2010 and has fixed all-in-costs ceilings under approval route for loan agreements entered into on or after January 01, 2010 as under:

Average Maturity Period	All -in-cost Ceilings over six month Libor*
Three years and up to five years	300 basis points
More than five years	500 basis points
*for the respective currency of borrowing or applicable benchmark.	

Where, an eligible borrower intends to avail of ECB after December 31, 2009, and has entered into the loan agreement on or before December 31, 2009 (with the all-in-cost ceiling exceeding the above limits), the borrower should furnish a copy of the loan agreement to the RBI and his application would be considered under the approval route.

Respite for Infrastructure Sector:

Currently, a corporate may raise funds for the development of integrated townships¹ as it is a permitted end use until December 31, 2009. The RBI, taking into account the infrastructural needs of the country, has permitted corporates to avail of ECB for the development of integrated townships for another 12 months until December 31, 2010.

Further, the current policy allows Non-Banking Financial Companies ("NBFC") exclusively involved in financing infrastructure sector, to raise ECB only from multilateral or regional financial institutions and from developmental financial institutions owned by the government for on-lending to the borrowers in the infrastructure sector.

The Amendment does away with this restriction and NBFC's involved exclusively in infrastructure sector can now borrow from any eligible lender under the approval route. Under the approval route, the eligible lenders are (i) international banks, (ii) international capital markets, (iii) multilateral financial institutions (such as IFC, ADB, CDC etc.), (iv) export credit agencies, (v) suppliers of equipment, (vi) foreign collaborators, and (vii) foreign equity holders. However, the borrowing NBFCs must comply with the prudential standards applicable and also fully hedge the currency risk with respect to the funds borrowed.

RBI no more a Santa:

RBI vide its **Circular dated December 8, 2008** has permitted buyback of Foreign Currency Convertible Bonds ("FCCBs") where the entire process of FCCB buyback was to be completed by March 31, 2009². Subsequently, RBI vide its **Circular dated March 13, 2009**, permitted FCCB buyback until December 31, 2009. Finally, RBI has decided to discontinue this facility from January 01, 2010.

Thrust to Telecom Sector:

With the impending spectrum auctions, payment for acquiring 3G spectrum was already a permissible end use under the existing ECB policy. However there was no clarity on whether payment for Broadband Wireless Access (BWA) spectrum would also be a permitted end use. The Department of Telecommunication's Information Memorandum provided that acquisition of BWA spectrum would also be covered. The current Amendment permits eligible borrower under the telecommunication sector to avail ECB for the purpose of payment for spectrum. It may be assumed that spectrum would also include BWA spectrum. However a specific mention of BWA would have been helpful in bringing certainty.

Implications:

The Amendment definitely opens up huge opportunities for the infrastructure sector. Further, NBFCs involved in on-lending in the infrastructure sector can now borrow from all eligible lenders under the approval route, giving them many more avenues to raise funds.

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On the flipside, the amendment takes away the liberty of the parties to lend and borrow at mutually agreed rates under the approval route. Prior to the amendment the all in cost ceiling under the approval route was flexible and the parties could transact at rates of their convenience subject to approval of RBI. The amendment negates the flexibility and equates the all-in-costs ceilings on ECB under the automatic route and the approval route.

A very interesting point to be noted is that the amendment would be effective only from January 1, 2010. If the parties are quick enough they can still avail the benefit of flexible all in cost ceilings under the existing ECB regulations by entering into the loan agreement for the ECB before December 31, 2009. All applications filed in respect of loan agreements signed before December 31, 2009, would not be affected by the amendment. Hence it would be a smart move to enter into the loan agreement at the earliest.

1 Development of integrated townships has been defined in Press Note 3 of 2002 issued by the Government of India, to include housing, commercial premises, hotels, resorts, city and regional level urban infrastructure facilities such as roads and bridges, mass rapid transit systems and manufacture of building material.

2 Please refer to out earlier hotline "**RBI Acts Santa for FCCB Issuers – Permits FCCB Buyback**" dated December 09, 2008.

- **P. Basava Rao & Sangeeta Rana**

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