

**ALL INDIA CHARTERED ACCOUNTANTS SOCIETY (AICAS)**

**2<sup>nd</sup> Workshop on Foreign Exchange Management Act (FEMA)**



**INTERNATIONAL DEBT FUND: INCLUDING EXTERNAL  
COMMERCIAL BORROWINGS [ECB]**



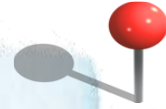
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# POPULAR FUNDING OPTIONS

**END USE RESTRICTION**

- External Commercial Borrowing [ECB].
- Non Convertible Debentures
- Partially/Optionally Convertible Preference Shares
- Partially/ Optionally Convertible Debentures.



- Equity Share Capital
- Fully convertible Preference Share capital
- Fully convertible Debentures

**NO END USE RESTRICTION**



# REGULATORY OVERVIEW

FAQs on  
ECB - 29th  
May 2019

A.P. DIR  
Series  
Circulars

Master Direction  
No.5/2018-19  
Updated on 30<sup>th</sup>  
September, 2022



Section 6 (2)  
(Capital Account  
Definition) of  
FEMA, 1999  
(Governing  
Provisions)

Notification  
FEMA  
3R(Borrowing or  
Lending)  
Regulations,  
2018

Being a Capital Account Transaction, it is permissible only as stipulated. In case of doubt, always go for RBI approval

# WHAT IS EXTERNAL COMMERCIAL BORROWING [ECB]?

- **Commercial loans**
- Raised by **eligible resident entities**
- From **recognized non-resident entities**
- Conforming to **parameters** such as
  - ✓ minimum maturity,
  - ✓ permitted end-uses,
  - ✓ non-permitted end-uses,
  - ✓ maximum all-in-cost ceiling, etc.



## FORMS OF ECB

Bank/ Other  
Loans

Securitized  
instruments

Trade  
Credits > 3 Y

FCCBs/  
FCEB

Financial  
Lease

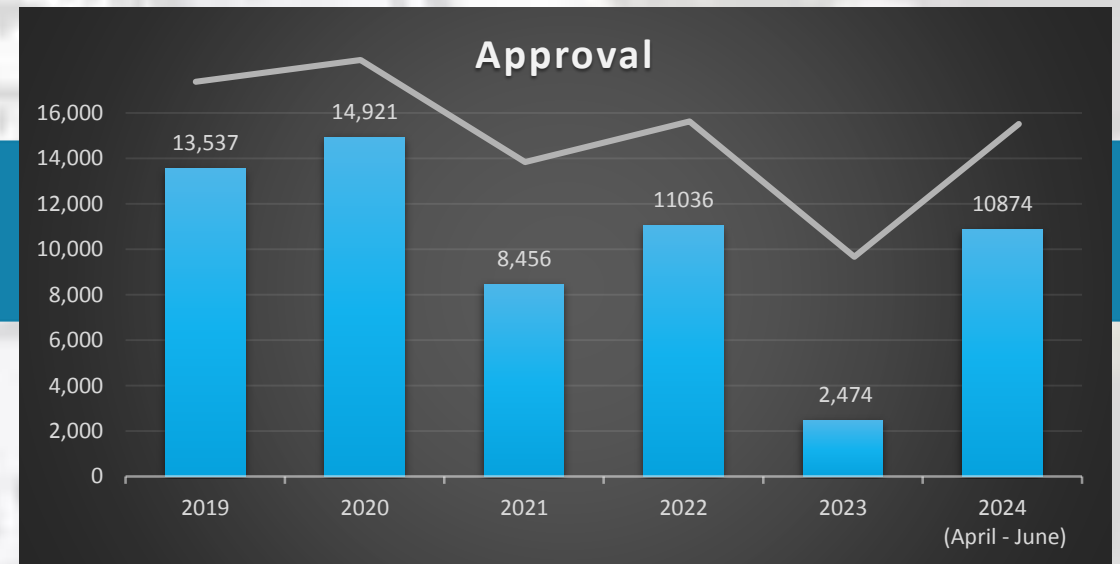
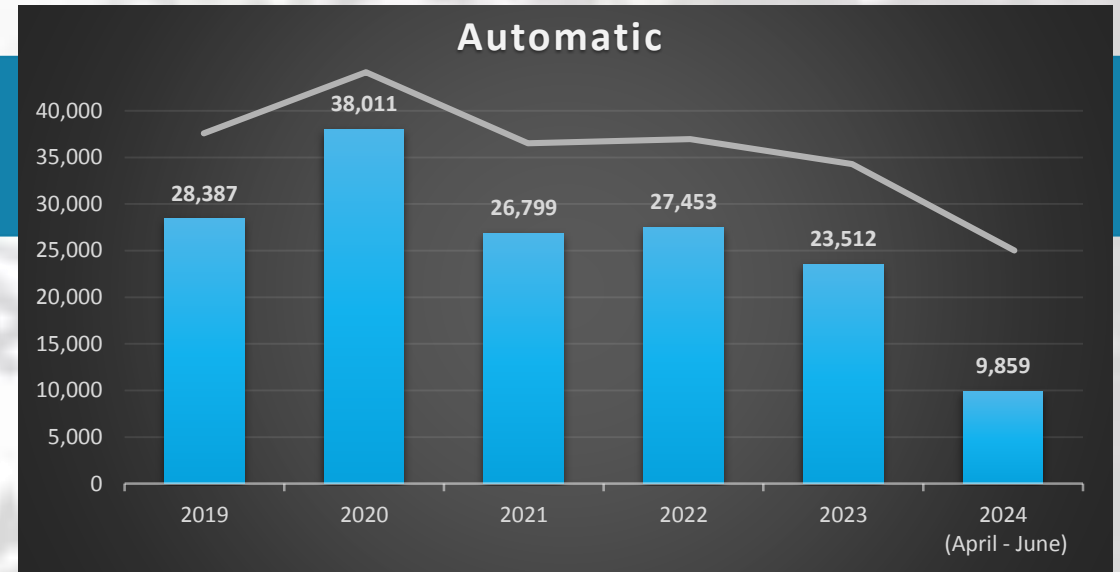
# AUTOMATIC ROUTE

## STATISTICAL REPRESENTATION OF ECB REGISTRATIONS

# APPROVAL ROUTE

Statistics as at 30<sup>th</sup> June, 2023  
(Financial year wise)

*As available on RBI website*



# ECB RAISING OPTIONS

## INR/ FCY ECB

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graph TD; A[INR/ FCY ECB] --> B[AUTOMATIC ROUTE]; A --> C[APPROVAL ROUTE]
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### AUTOMATIC ROUTE

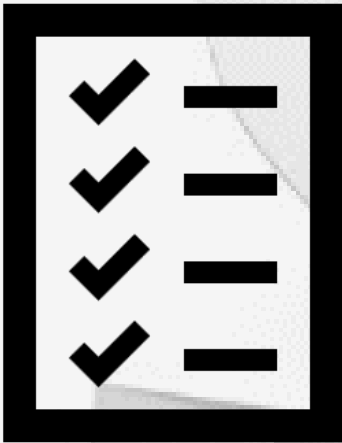
- Up to USD 750 million or equivalent per FY from a borrower.
- FCY ECB from foreign equity holder :- Debt equity ratio of 7:1 to be maintained.
- Above ratio not applicable if o/s amount of all ECB (including proposed) is less than USD 5 million.
- Conforming to all parameters prescribed under this ECB framework.

### APPROVAL ROUTE

- Entities not conforming to parameters laid down.
- To make an application to RBI through their AD Bank
- RBI Empowered Committee to consider application
- Final decision by RBI

# KEY PARAMETERS (CUMULATIVE)

- Eligible Borrowers
- Recognised Lenders
- Minimum Average Maturity Period
- End use prescriptions
- All in cost Ceiling
- Limits
- Currency





# Eligible Borrowers

## FCY ECB

All entities which are eligible to receive FDI

Port Trusts

SIDBI

Units in SEZ

EXIM Bank of India

## INR ECB

All entities eligible for FCY denominated ECB

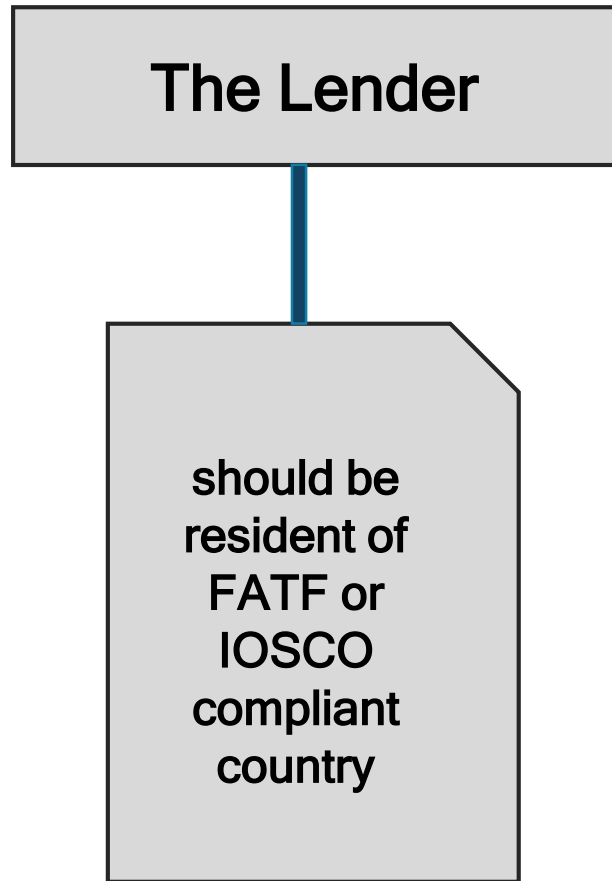
Registered entities engaged in micro finance activities

Registered NPOs

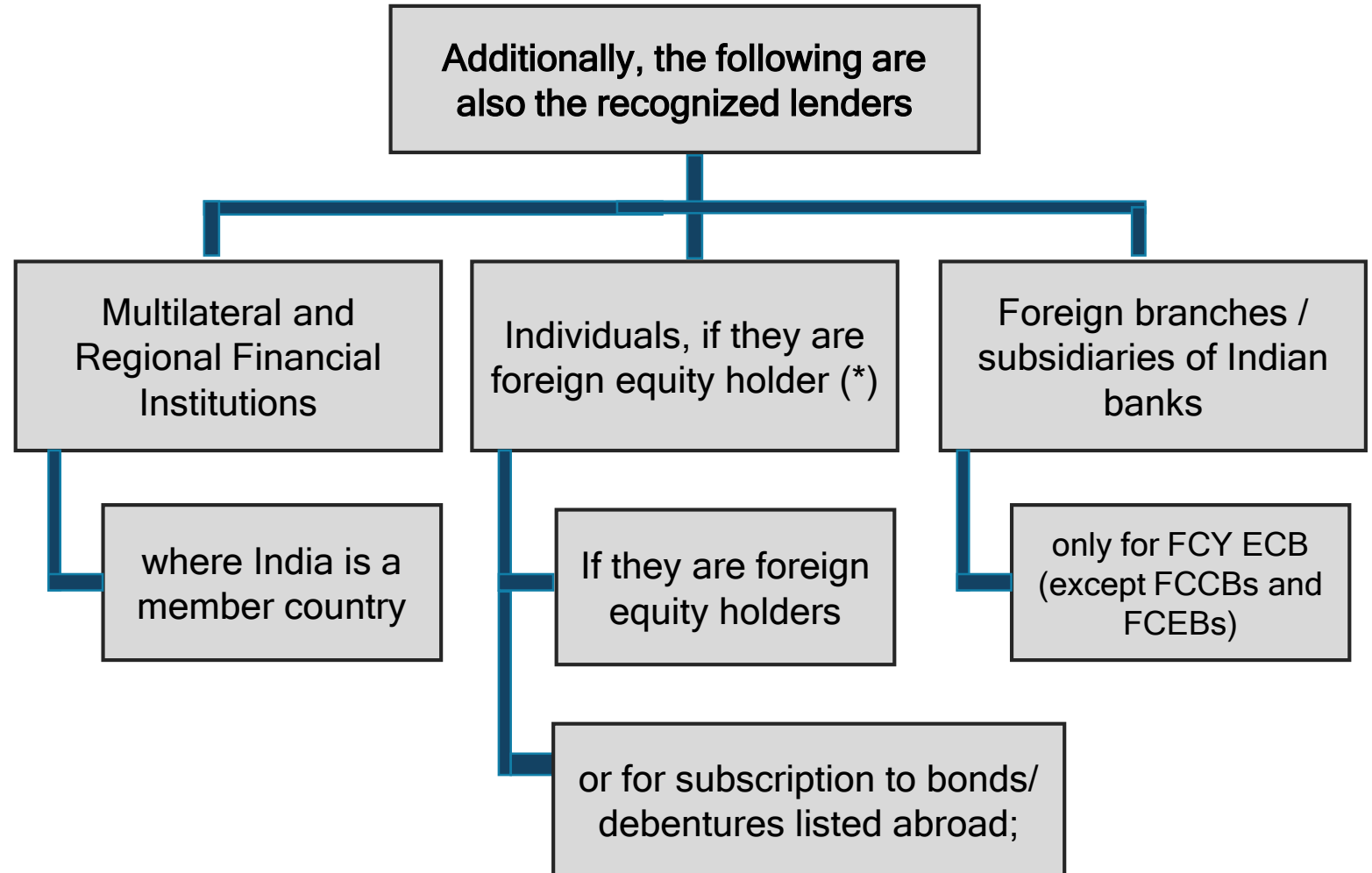
Registered Societies/ Trust/ Cooperatives

Non Governmental Organisation

# Recognised Lenders



Popular form of Lender : Foreign Parent / Holding Co.



(\*) holds minimum 25% directly or 51% indirectly in borrower.

# MINIMUM AVERAGE MATURITY PERIOD (MAMP)

Minimum Average maturity period : Should be 3 years (eg. Import of Capital goods, Overseas investment in JV / WOS, Modernisation, New Project, etc)

However, for the specific categories mentioned below, the MAMP will be as prescribed therein:

No.	Category	MAMP
(a)	ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year
(b)*	ECB raised from <b>foreign equity holder (#)</b> for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 years
(c)*	ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes	10 years
(d)*	ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose	7 years
(e)*	ECB raised for (i) repayment of Rupee loans availed domestically (other than capital expenditure) (ii) on-lending by NBFCs for the same purpose	10 years

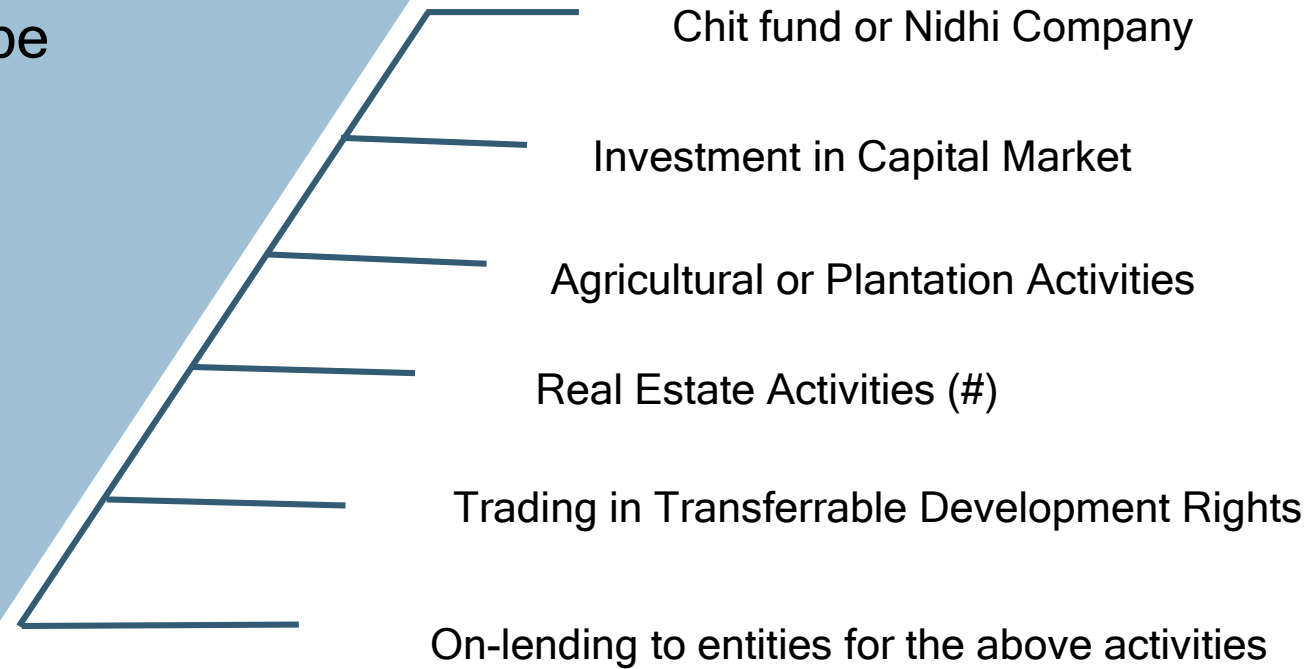
## (#) Foreign Equity Holder :

- Direct foreign equity holder - min 25% direct equity holding
- Indirect equity holder - min indirect equity holding of 51%
- Group Company with common overseas parent

\*ECB cannot be raised from foreign branches/subsidiaries of Indian banks for working capital, general corporate purposes and repayment of rupee loans.

# NEGATIVE LIST / RESTRICTED END USE

The ECB proceeds cannot be utilized for the following:



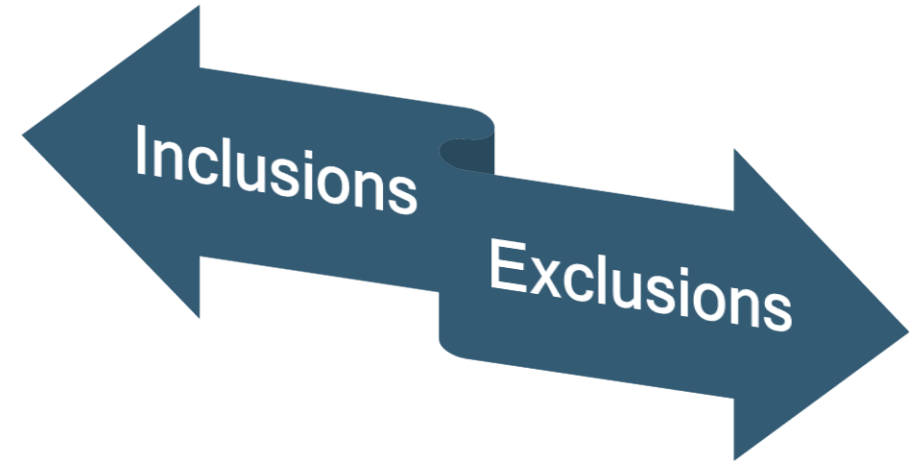
(#) Any real estate activity involving own or leased property, for buying, selling and renting of commercial and residential properties or land and also includes activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling, letting or managing real estate. However, this would not include,  
(i) construction/development of industrial parks/integrated townships/SEZ  
(ii) purchase/long term leasing of industrial land as part of new project/modernisation of expansion of existing units and  
(iii) any activity under 'infrastructure sector'

(\*) : Except if conditions are met as mentioned in MAM

# ALL IN COST CEILING

## INCLUSIONS

- Rate of Interest
- Other Fees
- Expenses
- Charges
- Guarantee Fees
- ECA Charges whether in FCY or INR



## EXCLUSIONS

- Commitment Fees
- Withholding Tax payable in INR

# All in cost ceiling p.a. - Benchmark Rate

## FCY ECB

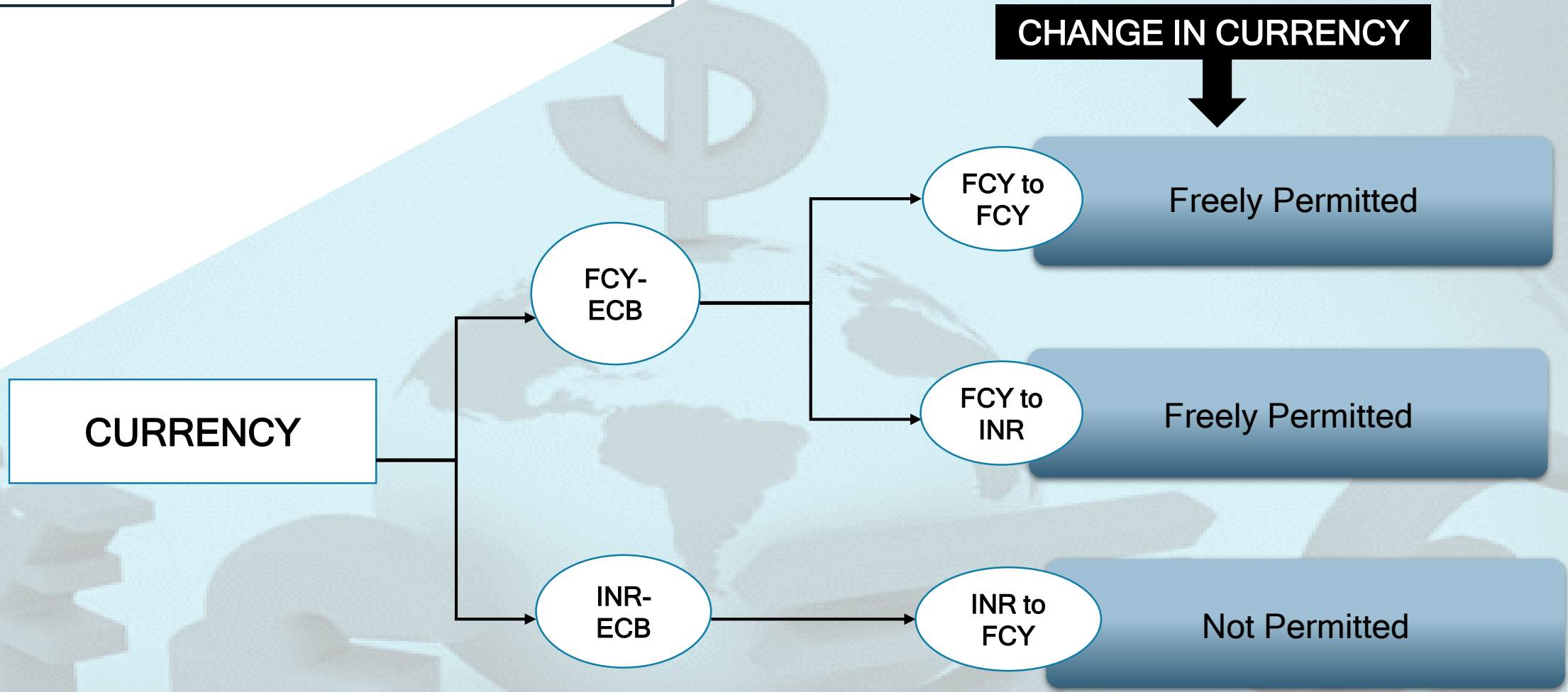
- Widely accepted interbank rate or Alternate Reference Rate ARR (\*) of 6-month tenor, applicable to the currency of borrowing - SOFR, SONIA, EURIBOR.
- Plus 500 basis points over the benchmark rate (ARR).[From 08.12.2021]

## INR ECB

- Prevailing yield of the Govt. Sec. of corresponding maturity.
- 450 basis points over the benchmark rate (Govt. Securities ) *[As at 23.08.23 rate @ 7.04% for 6 months tenure]*

*(\*) A.P. (DIR) Cir No. 19 dated. 8.12.2021, all banks changed their benchmark from LIBOR to any widely accepted alternative reference rate (ARR) for e.g. SOFR - SECURED OVERNIGHT FINANCING RATE for USD or SONIA (Sterling Overnight Index Average) for GBP*

# Change of Currency of Borrowings



# HEDGING

## FCY-ECB

- Guidelines issued by the concerned sectoral or prudential regulator to be followed for hedging,
- For Infrastructure space companies
  - ✓ Requires board approved risk management policy
  - ✓ Mandatory hedge of 70% of ECB exposure if average maturity < 5 years

## INR-ECB

- Hedging through permitted derivative products with AD Category I banks in India
- Foreign investor can also access domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on back to back basis



# OPERATIONAL ASPECTS WITH RESPECT TO HEDGING

1

## Coverage

Required to cover the principal as well as the coupon through financial hedges from date of liability created in the books.

2

## ➤ Tenor & Rollover

➤ Minimum 1 year periodic rollover to ensure nothing is left out unhedged.



3

## ➤ Natural Hedge

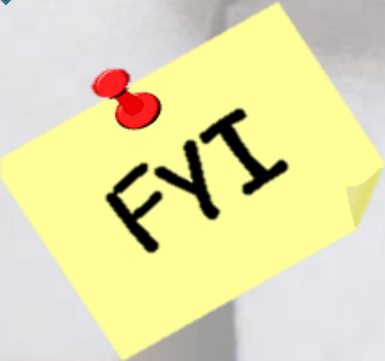
➤ To be considered to the extent of offsetting projected cash flows / revenues in matching currency net off projected outflows within same accounting year

# ECB LIABILITY-EQUITY RATIO

- In case of FCY ECB's raised from foreign equity holder - must **not exceed 7:1** [Applicable, if outstanding amount of ECB > USD 5 million]

- Ratio shall be considered with respect to the concerned foreign equity holder.
- In case of more than one foreign equity holder, the portion of the share premium in the foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ratio.

- Borrowing entities to be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

- 
- ECB Liability : Outstanding amount of all ECB ( other than INR denominated) + the proposed ECB
  - Equity : Paid up capital + Free reserves (proportionate share premium received in Foreign currency)

***#All figures to be taken as per latest audited Balance Sheet***

# ABROAD



ECB proceeds meant only for foreign currency expenditure can be parked abroad for utilisation

Until utilisation, these funds can be invested in the following:

Deposits or CD or other products offered by banks rated not less than AA (-) by S&P/ Fitch IBCA or Aa3 by Moody's

Treasury bills and other monetary instruments of one-year maturity having minimum rating as mentioned.

Deposits with foreign branches/subsidiaries of Indian banks abroad

# PARKING OF ECB PROCEEDS

## DOMESTICALLY

ECB proceeds meant for Rupee expenditure



Repatriated immediately for credit to their Rupee accounts with AD CAT I banks in India

In term deposits with AD CAT I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

# REFINANCING EXISTING ECB

Permitted by raising fresh ECB, provided:

- Outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is NOT REDUCED.
- all-in-cost of fresh ECB (weighted average cost in case of multiple borrowings) to be LOWER than all-in-cost of existing ECB



Refinancing of ECBs raised under the previous ECB framework (wholly and in part) - permitted subject to adherence to eligibility criteria of existing provisions

Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporates (AAA) and for Maharatna/Navratna public sector undertakings.

Refinancing of INR ECB with FCY ECB is not permitted.

# Conversion of ECB to Equity

Permitted  
Subject To:



Activity of borrowing company covered under automatic route or required Gov. approval is obtained for FDI

Conversion at exchange rate on the date of agreement or any lesser rate with mutual Consent

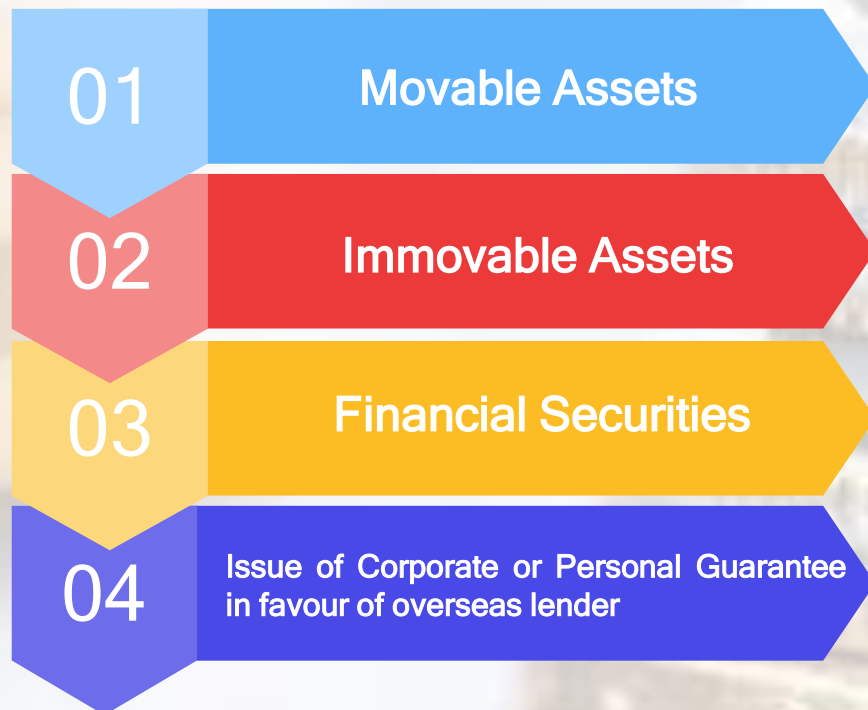
Consent of lenders

Compliance with pricing guidelines are complied with

Conversion not to breach applicable sectoral cap under FDI policy

# SECURITY/ CREATION OF CHARGE

## Security



## Creation of Charge

### Movable Property

In case of enforcement/ invocation of charge, the claim of the lender will be restricted to outstanding claim against ECB.

### Financial securities

Pledge of shares of the borrowing company held by the promoters as well as domestic companies of the borrower is permitted.

Pledge on other financial securities, viz. bonds and debentures, Government securities, Government Saving Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds

### Immovable Property

Security shall be subject to (Acquisition and Transfer of Immovable Property in India) Regulation 2017;

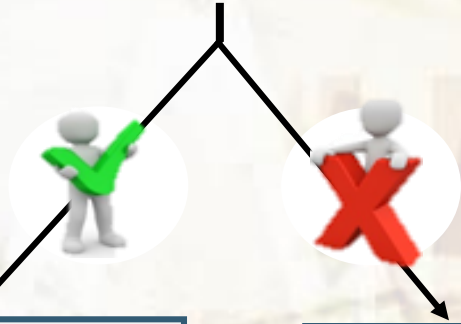
Permission should not be construed as permission to acquire immovable property by overseas lender/security trustee;

In case of enforcement / invocation, property should be sold to Person Resident in India and proceeds shall be repatriated to liquidate the outstanding ECB

# DEEMED ECB



## TIME LIMIT FOR IMPORT PAYMENT



Payment made within  
6months  
(approved extension  
upto 3 years)

DEEMED ECB  
(TC outstanding >  
3years)

## DEEMED ECB

- Shall be considered as contraventions
- Non compliance to ECB parameters such as:
  - ✓ eligibility criteria,
  - ✓ Drawdown without obtaining LRN,
  - ✓ Non-adherence to reporting requirements etc.
- Shall be regularized by making an application for compounding to RBI.





# REPORTING REQUIREMENTS ECB

# FORM ECB - DOCUMENTS REQUIRED

- ✓ Loan Agreement covering amount, purpose, interest, drawdown & repayment schedule
- ✓ Working of Minimum Average Maturity Period (MAMP) as prescribed by the regulation
- ✓ Brief Profile of the Borrower and Lender & Declaration from Borrower and Lender
- ✓ CA Certification of Form ECB (Summary Sheet)
- ✓ Form ECB duly filled



Submit **Form ECB** and other required documents in physical form to AD Bank

Summary sheet of Form ECB should be certified by **the CS/CA**

AD Category I bank to forward one copy to the **DSIM**

DSIM will allot **LRN** to the borrower

DSIM - Department of Statistics and Information Management  
LRN - Loan Registration Number

# CONSIDERATIONS WHILE AVAILING ECB



## IMPORTANT POINTS

Verify that Borrower is eligible

Confirm that Lender is recognized

Permitted End Use as per RBI guidelines

Adhere to Minimum Maturity Period

Comply with All in one Ceiling

Obtain LRN

Drawdown with LRN

\* SUBJECT TO CERTAIN TERMS AND CONDITIONS

# CHANGES IN ECB PARAMETERS

## REPORTING REQUIREMENTS

### CHANGE IN TERMS OF

Drawdown/  
repayment  
schedule

Name of the  
Borrower  
Company

Recognised  
Lender

Currency of  
Borrowings

End use of  
ECB  
proceeds.

AD Bank

Cancellation  
of LRN.

- Revised Form ECB\* for changes in parameters in consonance with ECB Norms should be reported to the **DSIM through AD Bank** not later than **7 days** from the changes effected.
- While submitting the revised Form ECB, the changes should be specifically mentioned.
- The above should be with the **consent of the Lender(s)**.

\*Subject to certain terms & conditions

# MONTHLY RETURN ECB - 2



Form ECB- 2 Return  
(Certified by CA/CS)

To be submitted (in physical form)  
within 7 working days from the  
close of month to which it relates

Through Designated AD Bank to  
DSIM, RBI

## CHECKLIST OF DOCUMENTS:

- Copy of Form ECB filed (Original/Revised)
- Copy of LRN issued by RBI
- Bank statement for the month.
- Drawdown or utilization details from client
- Underlying supporting for verification of above.

**NIL return** - To be filed even if there is no transaction

# CONVERSION OF ECB INTO EQUITY

## REPORTING COMPLIANCES

- Form FC- GPR - Online on FIRMS portal
- Form ECB-2 - "ECB Wholly Converted to Equity" should be indicated on top of the ECB- 2 form. \*

\*Once reported, filing of ECB-2 in the subsequent months is not necessary.

- Form FC- GPR - conversion of shares - Online on FIRMS portal
- Form ECB 2 - remaining portion of ECB - "ECB Partially Converted to Equity" should be clearly indicated on top of the ECB- 2 form

Within 7 working days from the close of month to which it relates

## Delay in reporting compliances to be regularised by payment of “ Late Submission Fee”

TYPE OF RETURN/FORM	APPLICABLE LSF
Form ECB 2/Form ECB / Revised Form ECB	[7,500 + (0.025% x A x n)]

“n” is the year number of years of delay in submission rounded - upwards to the nearest month and expressed up to 2 decimal points.

“A” is the amount involved in the delayed reporting.

LSF amount is per return. However, for any number of Form ECB-2 returns, delayed, submission for each LRN will be treated as one instance for the fixed component.

- ★ Regularisation of contravention by payment of LSF is ONLY for reporting delays.
- ★ Any other contravention under ECB shall have to be regularised by making an application to RBI for compounding the said contravention

# ECB FOR START UPS

## Eligibility

An entity recognized as a Startup by the Central Government as on date of raising ECB

## Amount

USD 3 million or equivalent per financial year either in INR or any other convertible foreign currency or a combination of both

## MAMP

Minimum average maturity period of 3 years

## All-in-costs

Mutually agreed between the borrower and lender

## Recognized Lender

Lender / investor to be a resident of FATF compliant country  
Overseas branches/subsidiaries of Indian banks & overseas WOS/JV of an Indian company - Not permissible

## Form and End-use

Form - Loans or non-convertible or optionally convertible or partially convertible preference shares.  
End Use - For any expenditure in connection with the business of borrower

## Currency Conversion

Denominated in any freely convertible currency or in INR or a combination thereof  
Conversion of ECB into equity is freely permitted -rate as per date of agreement



# Important consideration for ECB option

- Availing ECB involves time and is a long process and hence is not suitable for immediate funding option.
- **Only Physical Submission** of Form ECB and other underlying documents to AD Bank within prescribed timeline. Hence needs to be pre-planned.
- Less time provided (only 7 days) for Monthly compliances relating to ECB -2 returns. Even single day delay in submission of Form ECB or Monthly return attracts LSF.
- Online filing option for ECB not yet available.
- Any changes in the ECB terms and parameters requires huge documentation and is therefore cumbersome. Strict timelines need to be adhered to.
- Equity holder to continue till completion of ECB (for Working capital)
- Borrower cannot make Past Payments from the ECB Funds and can only use for prospective payables
- Proper consideration required while checking for Utilisation purpose and MAMP conditions.
- Exit is possible through pre-payment (adhering to MAMP) or through Conversion of ECB into Equity.
- Preferable for Foreign party as funds will be received back with Interest.
- Implication of Section 94 B of Income Tax Act, 1961 to be considered for interest expenditure on ECB Loan, if applicable.

# GENERALLY COMMITTED CONTRAVENTIONS IN ECB

**Drawdown of ECB  
before obtaining LRN**

**Not a permissible end  
use**

**Not an eligible borrower/  
Availment from non  
recognised lender**

**Non-adherence to the  
MAMP of the loan**

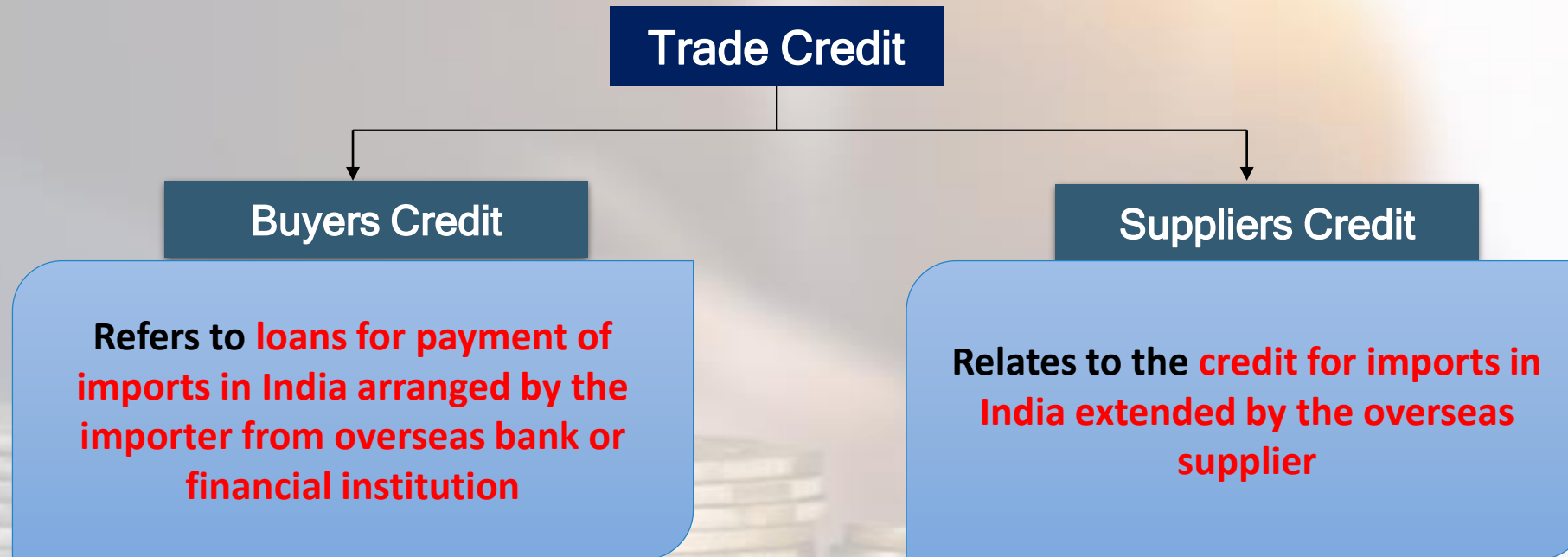
**Non adherence to  
reporting requirements**

**Breach of All in cost**

**Delay in payment of  
Trade credits > 3 years**

# TRADE CREDIT FRAMEWORK

**Trade credit (TC)** - credits extended by the overseas supplier, bank, financial institution and other permitted recognized lenders for maturity, as prescribed in Trade Credit framework, for imports of capital goods permissible under the Foreign Trade Policy of the Government of India.



# Buyers Credit and Suppliers Credit

## Eligibility

Person resident in India acting as an importer

## Amount

For Oil/gas refining and marketing, Airline and shipping companies: USD 150 million or equivalent per import transaction

For others : USD 50 million or equivalent per import transaction

## Period of TC

For import of capital goods - Upto 3 years from the date of shipment

For import of non-capital goods:

- Upto 1 year from the date of shipment or the operating cycle whichever is less
- For shipyards/shipbuilders - Upto 3 years from the date of shipment

## All-in-cost ceiling p.a.

**FCY denominated Trade Credit (TC):**

For existing TCs linked to LIBOR whose benchmarks are changed to ARR - Benchmark Rate plus **350 bps** spread

For new TCs - Benchmark rate plus **300 bps** spread

**INR denominated TC:** Benchmark Rate plus 250 bps spread

## Recognized Lender

**For Buyers Credit:** Banks, financial institutions, foreign equity holder(s) located outside India and financial institutions in IFSCs located in India.

**For Suppliers Credit:** Supplier of goods located outside India


# SECURITY FOR TRADE CREDIT

## Bank Guarantee



- Bank guarantee may be given by the AD bank in favour of overseas lender not exceeding amount of TC;
- TC may also be secured by overseas guarantee issued by foreign banks/overseas branches of Indian banks;
- Period - Not to exceed maximum permissible period for TC;
- Issuance of guarantee will be subject to compliance with the provisions contained in Department of Banking Regulation Master Circular on Guarantees and Co-acceptances

- For the purpose of raising TC, importer may offer security of:
  - Movable Assets(including financial assets)
  - Immovable Assets (excluding land in SEZs)
  - Corporate or Personal guarantee



## Corporate/Personal Guarantee of Importer

HINESH R. DOSHI & CO. LLP  
*Chartered Accountants*



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103.204.166.11



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