



भारतीय रिज़र्व बैंक  
RESERVE BANK OF INDIA  
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FED Master Direction No.5/2018-19

March 26, 2019  
(Updated as on August 01, 2022)  
(Updated as on June 09, 2022)  
(Updated as on December 10, 2021)  
(Updated as on April 12, 2021)  
(Updated as on August 08, 2019)

To  
All Authorised Dealer Category – I banks and Authorised Banks  
Madam / Dear Sir,

**Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations**

Transactions on account of External Commercial Borrowings (ECB) and Trade Credit (TC) are governed by sub-section 2 of section 6 of the Foreign Exchange Management Act, 1999 (FEMA). Various provisions in respect of these two types of borrowing are included in the following Regulations framed under FEMA:

- i. Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, notified vide [Notification No. FEMA 3R/2018-RB dated December 17, 2018](#), as amended from time to time; and
- ii. Foreign Exchange Management (Guarantees) Regulations, 2000, notified vide [Notification No. FEMA 8/2000-RB dated May 03, 2000](#), as amended from time to time.

2. Within the contours of the Regulations, Reserve Bank of India also issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/constituents with a view to implementing the regulations framed.

3. Instructions issued in respect of External Commercial Borrowings and Trade Credits have been compiled in this Master Direction in supersession of earlier directions contained in [Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers, dated January 1, 2016](#), as amended from time to time. The said Master Direction can, however, be accessed using the link provided. The list of underlying notifications/circulars which form the basis of this Master Direction is furnished in the Appendix. Reporting instructions can be

found in Master Direction on reporting ([Master Direction No. 18 dated January 01, 2016](#), as amended from time to time).

4. It may be noted that, whenever necessary, Reserve Bank shall issue directions to Authorised Persons through A.P. (DIR Series) Circulars in regard to any change in the Regulations or the manner in which relative transactions are to be conducted by the Authorised Persons with their customers/ constituents and/ or amend the Master Direction issued herewith. This Master Direction has been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

Yours faithfully

(Ajay Kumar Misra)  
Chief General Manager-in-Charge

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## ACRONYMS

AD:	Authorised Dealer
AIC:	All-in-Cost
AMP:	Average Maturity Period
<sup>1</sup> ARR:	Alternative Reference Rate
CIRP:	Corporate Insolvency Resolution Process
DSIM:	Department of Statistics and Information Management
DTA:	Domestic Tariff Area
ECA:	Export Credit Agency
ECB:	External Commercial Borrowings
<sup>2</sup>	
FATF:	Financial Action Task Force
FCCB:	Foreign Currency Convertible Bond
FCEB:	Foreign Currency Exchangeable Bond
FCY:	Foreign Currency
FDI:	Foreign Direct Investment
FEMA:	Foreign Exchange Management Act
FTWZ:	Free Trade and Warehousing Zone
IFSC:	International Financial Services Centre
INR:	Indian Rupee
LIBOR:	London Interbank Offered Rate
LIN:	Loan Identity Number
LRN:	Loan Registration Number
NBFC:	Non-Banking Financial Company
RBI:	Reserve Bank of India
SEBI:	Securities and Exchange Board of India
SEZ:	Special Economic Zone
SIDBI:	Small Industries Development Bank of India
TC:	Trade Credit
USD:	United States Dollar
XBRL:	eXtensible Business Reporting Language

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<sup>1</sup> Inserted vide [A.P.\(DIR Series\) Circular No. 19 dated December 08, 2021](#).

<sup>2</sup> Deleted vide [A.P.\(DIR Series\) Circular No. 19 dated December 08, 2021](#). Deleted portion read as “EURIBOR: Euro Interbank Offered Rate”

## **1. Important terms used:**

**1.1. All-in-Cost:** It includes rate of interest, other fees, expenses, charges, guarantee fees, ECA charges, whether paid in foreign currency or INR but will not include commitment fees and withholding tax payable in INR. In the case of fixed rate loans, the swap cost plus spread should not be more than the floating rate plus the applicable spread. Additionally, for FCCBs, the issue related expenses should not exceed 4 per cent of the issue size and in case of private placement, these expenses should not exceed 2 per cent of the issue size, etc. Under TC Framework, all-in-cost shall include rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or INR. Withholding tax payable in INR shall not be a part of all-in-cost. Various components of all-in-cost have to be paid by the borrower without taking recourse to the drawdown of ECB/TC, i.e., ECB/TC proceeds cannot be used for payment of interest/charges.

**1.2. Approval route:** Under the ECB/TC framework, ECB/TC can be raised either under the automatic route or under the approval route. Under the approval route, the prospective borrowers are required to send their requests to the Reserve Bank through their AD Banks for examination.

**1.3. Authorised dealer:** Means a person authorised as an authorised dealer under subsection (1) of section 10 of the FEMA, 1999 (42 of 1999).

**1.4. Automatic route:** For the automatic route, the cases are examined by the Authorised Dealer Category-I (AD Category-I) banks.

**1.5. Benchmark rate:** Benchmark rate in case of FCY ECB/TC refers to <sup>3</sup>any widely accepted interbank rate or ARR of 6-month tenor, applicable to the currency of borrowing. Benchmark rate in case of Rupee denominated ECB/TC will be prevailing yield of the Government of India securities of corresponding maturity.

**1.6. Designated Authorised Dealer Category I Bank:** It is the bank branch which is designated by the ECB/TC borrower for meeting the reporting requirements including obtaining of the LRN/LIN from the Reserve Bank, exercising the delegated powers under these guidelines and monitoring of ECB/TC transactions.

**1.7. ECB liability-Equity ratio:** For the purpose of ECB liability-equity ratio, ECB amount will include all outstanding amount of all ECB (other than INR denominated) and the proposed one (only outstanding ECB amounts in case of refinancing) while equity will include the paid-

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<sup>3</sup> Substituted vide [A.P.\(DIR Series\) Circular No. 19 dated December 08, 2021](#). Prior to substitution it read as "6-months LIBOR rate of different currencies or any other 6-month interbank interest rate applicable to the currency of borrowing, for eg., EURIBOR"

up capital and free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet. Both ECB and equity amounts will be calculated with respect to the foreign equity holder. Where there is more than one foreign equity holder in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ratio. The ratio will be calculated as per latest audited balance sheet.

**1.8. FATF compliant country:** A country that is a member of the Financial Action Task Force (FATF) or a member of a FATF-Style Regional Body; and should not be a country identified in the public statement of the FATF as (i) A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or (ii) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

**1.9. Foreign Currency Convertible Bonds (FCCBs):** It refers to foreign currency denominated instruments which are issued in accordance with the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, as amended from time to time. Issuance of FCCBs shall also conform to other applicable regulations. Further, FCCBs should be without any warrants attached.

**1.10. Foreign Currency Exchangeable Bonds (FCEBs):** It refers to foreign currency denominated instruments which are issued in accordance with the Issue of Foreign Currency Exchangeable Bonds Scheme, 2008, as amended from time to time. FCEBs are exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. Issuance of FCEBs shall also conform to other applicable regulations.

**1.11. Foreign Equity Holder:** It means (a) direct foreign equity holder with minimum 25% direct equity holding in the borrowing entity, (b) indirect equity holder with minimum indirect equity holding of 51%, or (c) group company with common overseas parent.

**1.12. Infrastructure Sector:** It has the same meaning as given in the Harmonised Master List of Infrastructure sub-sectors, approved by Government of India vide Notification F. No. 13/06/2009-INF, as amended / updated from time to time. For the purpose of ECB, "Exploration, Mining and Refinery" sectors will be deemed as in the infrastructure sector.

**1.13. Infrastructure Space Companies:** Companies in the infrastructure sector, Non-Banking Finance Companies undertaking infrastructure financing, Holding Companies/ Core Investment Companies undertaking infrastructure financing, Housing Finance Companies regulated by National Housing Bank and Port Trusts (constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908).

**1.14. IOSCO Compliant Country:** A country whose securities market regulator is a signatory to the International Organisation of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the SEBI for information sharing arrangements.

**1.15. Person Resident in India:** It shall have the same meanings as assigned to them in Sections 2(v) of the FEMA, 1999.

**1.16. Real Estate Activities:** 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' definition.

**1.17. Special Economic Zone & Free Trade Warehousing Zone:** They shall have the same meaning as assigned to them in Special Economic Zones Act 2005, as amended from time to time.

## PART I – EXTERNAL COMMERCIAL BORROWINGS FRAMEWORK

**2. Introduction:** External Commercial Borrowings are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters given below apply in totality and not on a standalone basis.

**2.1. ECB Framework:** The framework for raising loans through ECB (hereinafter referred to as the ECB Framework) comprises the following two options:

Sr. No.	Parameters	FCY denominated ECB	INR denominated ECB
i	Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
ii	Forms of ECB	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease.	Loans including bank loans; floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.
iii	Eligible borrowers	All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India.	a) All entities eligible to raise FCY ECB; and b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations.
iv	Recognised lenders	The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However, a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs). Foreign branches / subsidiaries of Indian banks, subject to applicable	



		prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.																			
v	Minimum Average Maturity Period (MAMP)	<p>MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:</p> <table border="1"> <thead> <tr> <th>Sr.No.</th> <th>Category</th> <th>MAMP</th> </tr> </thead> <tbody> <tr> <td>(a)</td> <td>ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.</td> <td>1 year</td> </tr> <tr> <td>(b)</td> <td>ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans</td> <td>5 years</td> </tr> <tr> <td><sup>4</sup>(c)</td> <td>ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes</td> <td>10 years</td> </tr> <tr> <td>(d)</td> <td>ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose</td> <td>7 years</td> </tr> <tr> <td>(e)</td> <td>ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose</td> <td>10 years</td> </tr> </tbody> </table> <p>for the categories mentioned at (b) to (e) – (i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks (ii) the prescribed MAMP will have to be strictly complied with under all circumstances.</p>		Sr.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 foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 years	<sup>4</sup> (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 for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose	10 years
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vi	All-in-cost ceiling per annum	<sup>5</sup> Benchmark Rate plus <b>550 bps</b> spread: For existing ECBs linked to LIBOR whose benchmarks are changed to ARR. Benchmark rate plus <b>500 bps</b> spread: For new ECBs.	Benchmark rate plus 450 bps spread.																		

<sup>4</sup> Inserted vide [A.P.\(DIR Series\) Circular No. 04 dated July 30, 2019](#).

<sup>5</sup> Substituted vide [A.P.\(DIR Series\) Circular No. 19 dated December 08, 2021](#). Prior to substitution it read as “Benchmark rate plus 450 bps spread.”

		<sup>6</sup> All-in-cost ceiling has been temporarily increased by 100 bps for ECBs raised till December 31, 2022. The enhanced all-in-cost ceiling shall be available only to eligible borrowers of investment grade rating from Indian Credit Rating Agencies (CRAs). Other eligible borrowers may raise ECB within the existing all-in-cost ceiling as hitherto.	
vii	Other costs	Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.	
viii	End-uses (Negative list)	The negative list, for which the ECB proceeds cannot be utilised, would include the following: a) Real estate activities. b) Investment in capital market. c) Equity investment. d) <sup>7</sup> Working capital purposes, except in case of ECB mentioned at v(b) and v(c) above. e) General corporate purposes, except in case of ECB mentioned at v(b) and v(c) above. f) Repayment of Rupee loans, except in case of ECB mentioned at v(d) and v(e) above. g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at v(c), v(d) and v(e) above.	
ix	Exchange rate	Change of currency of FCY ECB into INR ECB can be at the exchange rate prevailing on the date of the agreement for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender.	For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.
x	Hedging provision	The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign	Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also

<sup>6</sup> Inserted vide [A.P. \(DIR Series\) Circular No. 11 dated August 01, 2022](#).

<sup>7</sup> Substituted vide [A.P.\(DIR Series\) Circular No. 04 dated July 30, 2019](#). Prior to substitution it read as below:

- a) Working capital purposes except from foreign equity holder.
- b) General corporate purposes except from foreign equity holder.
- c) Repayment of Rupee loans except from foreign equity holder.
- d) On-lending to entities for the above activities.

		<p>currency exposure. Infrastructure space companies shall have a Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of the ECB and report the position to RBI through Form ECB 2. The following operational aspects with respect to hedging should be ensured:</p> <ul style="list-style-type: none"><li>a. <b>Coverage:</b> The ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower).</li><li>b. <b>Tenor and rollover:</b> A minimum tenor of one year for the financial hedge would be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB.</li><li>c. <b>Natural Hedge:</b> Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this</li></ul>	<p>access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.</p>
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		purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting year. Any other arrangements/structures, where revenues are indexed to foreign currency will not be considered as a natural hedge.	
xi	Change of currency of borrowing	Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

**Note:** The ECB framework is not applicable in respect of investments in Non-Convertible Debentures in India made by Registered Foreign Portfolio Investors.<sup>8</sup>Lending and borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

**2.2. Limit and leverage:** Under the aforesaid framework, all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route. Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio for ECB raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

<sup>9</sup>The automatic route limit stands increased from USD 750 million or equivalent to USD 1.5 billion or equivalent. This relaxation is available for ECBs to be raised till December 31, 2022.

**3. Issuance of Guarantee, etc. by Indian banks and Financial Institutions:** Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs/ FCEBs in any manner whatsoever.

<sup>8</sup> Inserted vide [A.P. \(DIR Series\) Circular No. 17 dated January 16, 2019](#).

<sup>9</sup> Inserted vide [A.P. \(DIR Series\) Circular No. 11 dated August 1, 2022](#)

**4. Parking of ECB proceeds:** ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

**4.1. Parking of ECB proceeds abroad:** ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

**4.2. Parking of ECB proceeds domestically:** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

<sup>10</sup>To provide relief to ECB borrowers affected by the COVID- 19 pandemic, as a one time measure, with effect from April 07, 2021, unutilised ECB proceeds drawn down on or before March 01, 2020 can be parked in term deposits with AD Category-I banks in India prospectively, for an additional period up to March 01, 2022.

**5. Procedure of raising ECB:** All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework. For approval route cases, the borrowers may approach the RBI with an application in prescribed format ([Form ECB](#)) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.

**6. Reporting Requirements:** Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

**6.1. Loan Registration Number (LRN):** Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will

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<sup>10</sup> Inserted vide [A.P. \(DIR Series\) Circular No. 01 dated April 07, 2021](#)

forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051 (Contact numbers 022-26572513 and 022-26573612). Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

**6.2. Changes in terms and conditions of ECB:** Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.

**6.3. Monthly Reporting of actual transactions:** The borrowers are required to report actual ECB transactions through [Form ECB 2](#) Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.

**6.4. Late Submission Fee (LSF) for delay in reporting:**

6.4.1. Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix:

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

6.4.2. The borrower, through its AD bank, may pay the LSF by way of demand draft in favour of “Reserve Bank of India” or any other mode specified by the Reserve Bank. Such payment should be accompanied with the requisite return(s). Form ECB and Form ECB 2 returns reporting contraventions will be treated separately. Non-payment of LSF will be treated as contravention of reporting provision and shall be subject to compounding or adjudication as provided in FEMA 1999 or regulations/rules framed thereunder.

**6.5. Standard Operating Procedure (SOP) for Untraceable Entities:** The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

i. **Definition:** Any borrower who has raised ECB will be treated as ‘untraceable entity’, if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with

documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

- a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;
- b) Entities have not submitted Statutory Auditor's Certificate for last two years or more;

ii. **Action:** The followings actions are to be undertaken in respect of 'untraceable entities':

- a) File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;
- b) No fresh ECB application by the entity should be examined/processed by the AD bank;
- c) Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and
- d) No inward remittance or debt servicing will be permitted under auto route.

**7. Powers delegated to AD Category I banks to deal with ECB cases:** The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECB, except for FCCBs/FCEBs, duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s). Further, the following can also be undertaken under the automatic route:

**7.1. Change of the AD Category I bank:** AD Category I bank can be changed subject to obtaining no objection certificate from the existing AD Category I bank.

**7.2. Cancellation of LRN:** The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECB contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to DSIM.

**7.3. Refinancing of existing ECB:** Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB. Further, refinancing of ECB raised under the previous ECB frameworks may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework. Raising of fresh ECB to part refinance the existing ECB is also permitted subject to same conditions. Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporates (AAA) and for Maharatna/Navratna public sector undertakings.

**7.4. Conversion of ECB into equity:** Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

- i. The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.
- ii. The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;
- iii. Applicable pricing guidelines for shares are complied with;
- iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:
  - a. For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".
  - b. For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.
  - c. For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.
- v. If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;
- vi. Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.
- vii. For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

**7.5. Security for raising ECB:** AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:

- i. the underlying ECB is in compliance with the extant ECB guidelines,
- ii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and
- iii. No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Once the aforesaid stipulations are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or



personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB, subject to the following:

- i. **Creation of Charge on Immovable Assets:** The arrangement shall be subject to the following:
  - a) Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017, as amended from time to time.
  - b) The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.
  - c) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.
- ii. **Creation of Charge on Movable Assets:** In the event of enforcement/ invocation of the charge, the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic lender/s, if any.
- iii. **Creation of Charge over Financial Securities:** The arrangements may be permitted subject to the following:
  - a) Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.
  - b) In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.
  - c) In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time.
- iv. **Issue of Corporate or Personal Guarantee:** The arrangement shall be subject to the following:
  - a) A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.
  - b) Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.
  - c) Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.

d) ECB can be credit enhanced / guaranteed / insured by overseas party/ parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

**7.6. Additional Requirements:** While exercising the delegated powers, the AD Category I banks should ensure that:

- i. The changes permitted are in conformity with the applicable ceilings / guidelines and the ECB continues to be in compliance with applicable guidelines. It should also be ensured that if the ECB borrower has availed of credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, any extension of tenure of ECB (whether matured or not) shall be subject to applicable prudential guidelines issued by Department of Banking Regulation of Reserve Bank including guidelines on restructuring.
- ii. The changes in the terms and conditions of ECB allowed by the ADs under the powers delegated and / or changes approved by the Reserve Bank should be reported to the DSIM as given at paragraph 6.2 above. Further, these changes should also get reflected in the Form ECB 2 returns appropriately.

## **8. Special Dispensations under the ECB framework:**

**8.1. ECB facility for Oil Marketing Companies:** Notwithstanding the provisions contained in paragraph 2.1 (viii), 2.1 (x) and 2.2 above, Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging and individual limit requirements. The overall ceiling for such ECB shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECB. All other provisions under the ECB framework will be applicable to such ECB.

**8.2. ECB facility for Startups:** AD Category-I banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

- i. **Eligibility:** An entity recognised as a Startup by the Central Government as on date of raising ECB.
- ii. **Maturity:** Minimum average maturity period will be 3 years.
- iii. **Recognised lender:** Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.
- iv. **Forms:** The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.
- v. **Currency:** The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non-resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.

- vi. **Amount:** The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.
- vii. **All-in-cost:** Shall be mutually agreed between the borrower and the lender.
- viii. **End uses:** For any expenditure in connection with the business of the borrower.
- ix. **Conversion into equity:** Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.
- x. **Security:** The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a non-resident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.
- xi. **Hedging:** The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.

**Note:** Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.
- xii. **Conversion rate:** In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.
- xiii. **Other Provisions:** Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework. However, provisions on leverage ratio and ECB liability: Equity ratio will not be applicable. Further, the Start-ups as defined above [8.2. (i)] as well as other start-ups which do not comply with the aforesaid definition but are eligible to receive FDI, can also raise ECB under the general ECB route/framework.

**9. Borrowing by Entities under Investigation:** All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Category-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals,

the AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

**10. ECB by entities under restructuring/ ECB facility for refinancing stressed assets:**

10.1. An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.

10.2. <sup>11</sup>Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes. The applicable MAMP will have to be strictly complied with under all circumstances.

10.3. Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route, procedure of which is given at paragraph No. 5 above.

**11. Dissemination of information:** For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.

**12. Compliance with the guidelines:** The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA. The designated AD Category I bank is also expected to ensure compliance with applicable ECB guidelines by their constituents.

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<sup>11</sup> Inserted vide [A.P.\(DIR Series\) Circular No. 04 dated July 30, 2019](#).

## PART II – TRADE CREDITS FRAMEWORK

**13. Introduction:** Trade Credits (TC) refer to the credits extended by the overseas supplier, bank, financial institution and other permitted recognised lenders for maturity, as prescribed in this framework, for imports of capital/non-capital goods permissible under the Foreign Trade Policy of the Government of India. Depending on the source of finance, such TCs include suppliers’ credit and buyers’ credit from recognised lenders.

**14. Trade Credits Framework:** TC for imports into India can be raised in any freely convertible foreign currency (FCY denominated TC) or Indian Rupee (INR denominated TC), as per the framework given in the table below:

Sr. No.	Parameters	FCY denominated TC	INR denominated TC
i	Forms of TC	Buyers’ Credit and Suppliers’ Credit.	
ii	Eligible borrower	Person resident in India acting as an importer.	
iii	Amount under automatic route	Up to USD 150 million or equivalent per import transaction for oil/gas refining & marketing, airline and shipping companies. For others, up to USD 50 million or equivalent per import transaction.	
iv	Recognised lenders	<p><b>1. For suppliers’ credit:</b> Supplier of goods located outside India.</p> <p><b>2. For buyers’ credit:</b> Banks, financial institutions, foreign equity holder(s) located outside India and financial institutions in IFSCs located in India.</p> <p><b>Note:</b> Participation of Indian banks and non-banking financial companies (operating from IFSCs) as lenders will be subject to the prudential guidelines issued by the concerned regulatory departments of the Reserve Bank. Further, foreign branches/subsidiaries of Indian banks are permitted as recognised lenders only for FCY TC.</p>	
v	Period of TC	The period of TC, reckoned from the date of shipment, shall be up to three years for import of capital goods. For non-capital goods, this period shall be up to one year or the operating cycle whichever is less. For shipyards / shipbuilders, the period of TC for import of non-capital goods can be up to three years.	
vi	All-in-cost ceiling per annum	<sup>12</sup> Benchmark Rate plus <b>350 bps</b> spread: For existing TCs linked to LIBOR whose benchmarks are changed to ARR. Benchmark rate plus <b>300 bps</b> spread: For new TCs.	Benchmark rate plus 250 bps spread.

<sup>12</sup> Substituted vide [A.P.\(DIR Series\) Circular No. 19 dated December 08, 2021](#). Prior to substitution it read as “Benchmark rate plus 250 bps spread.”

vii	Exchange rate	Change of currency of FCY TC into INR TC can be at the exchange rate prevailing on the date of the agreement between the parties concerned for such change or at an exchange rate, which is less than the rate prevailing on the date of agreement, if consented to by the TC lender.	For conversion to Rupee, exchange rate shall be the rate prevailing on the date of settlement.
viii	Hedging provision	The entities raising TC are required to follow the guidelines for hedging, if any, issued by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Such entities shall have a board approved risk management policy.	The overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.
ix	Change of currency of borrowing	Change of currency of TC from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

#### **15. Trade Credits in SEZ/FTWZ/DTA:**

15.1. TC can be raised by a unit or a developer in a SEZ including FTWZ for purchase of non-capital and capital goods within an SEZ including FTWZ or from a different SEZ including FTWZ subject to compliance with parameters given at paragraph 14 above. Further, an entity in DTA is also allowed to raise TC for purchase of capital / non-capital goods from a unit or a developer of a SEZ including FTWZ.

15.2. TC transactions in respect of SEZs and DTAs as permitted above should also be in compliance with applicable provisions of SEZ Act, 2005 as amended from time to time. For TC transactions related to SEZ, date of transfer of ownership of goods will be treated as TC date. As there will be no bill of entry for sale transactions within SEZ, the inter unit receipt generated through NSDL can be treated as an import document.

**16. Security for Trade Credit:** The provisions regarding security for raising TC are as under:

16.1. Bank guarantees may be given by the ADs, on behalf of the importer, in favour of overseas lender of TC not exceeding the amount of TC. Period of such guarantee cannot be beyond the maximum permissible period for TC. TC may also be secured by overseas guarantee issued by foreign banks/overseas branches of Indian banks. Issuance of such guarantees i.e. guarantees by Indian banks and their branches/subsidiaries located outside India will be subject to compliance with the provisions contained in Department of Banking Regulation [Master Circular No.DBR.No.Dir.BC.11/13.03.00/2015-16 dated July 1, 2015](#) on “Guarantees and Co-acceptances”, as amended from time to time.

16.2. For the purpose of raising TC, the importer may also offer security of movable assets (including financial assets) / immovable assets (excluding land in SEZs) / corporate or personal guarantee for raising trade credit. ADs may permit creation of charge on security offered / accept corporate or personal guarantee, duly ensuring that:

- i. there exists a security clause in the loan agreement requiring the importer to create charge, in favour of overseas lender / security trustee on immovable assets / movable assets / financial securities / issuance of corporate and / or personal guarantee;
- ii. No objection certificate, wherever necessary, from the existing lenders in India has been obtained;
- iii. such arrangement is co-terminus with underlying TC;
- iv. In case of invocation, the total payments towards guarantee should not exceed the dues towards trade credit; and
- v. Creation/ enforcement / invocation of charge shall be as per the provisions contained in Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, as amended from time to time, or any other relative Regulations framed under the Foreign Exchange Management Act, 1999 and should also comply with applicable FDI/FII/SEZ policy/ rules/ guidelines.

**Note:** The directions on issuance of corporate or personal guarantee mentioned under this provision shall come into force from the date of publication, in the Official Gazette, of the relative Regulations issued under FEMA.

**17. Reporting requirements:** TC transactions are subject to the following reporting requirements:

**17.1. Monthly reporting:** AD Category I banks are required to furnish details of TCs like drawal, utilisation, and repayment of TC approved by all its branches, in a consolidated statement, during a month, in Form TC to the Director, Division of International Trade and Finance, Department of Economic Policy and Research, RBI, Central Office, Fort, Mumbai – 400 001 (and in MS-Excel file through [email](#)) so as to reach not later than 10<sup>th</sup> of the following

month. Each TC may be given a unique identification number by the AD bank. Format of Form TC is available at Annex IV of Part V of [Master Directions – Reporting under Foreign Exchange Management Act dated January 1, 2016](#), as amended from time to time.

**Note:** Suppliers' credit beyond 180 days and up to one year/three years from the date of shipment for non-capital/capital goods respectively, should also be reported by the AD banks. Further, permissions granted by the AD banks/Regional offices of Reserve Bank for settlement of delayed import dues in terms of paragraphs B.5 and C.2 of the [Master Direction on Import of Goods and Services dated January 1, 2016](#), as amended from time to time, should also be reported by the AD banks as per the aforesaid procedure.

**17.2. Quarterly reporting:** AD Category I banks are also required to furnish data on issuance of bank guarantees for TCs by all its branches, in a consolidated statement, at quarterly intervals on the XBRL platform. For the above purpose AD banks may login to the site <https://secweb.rbi.org.in/orfsxbrl/> using their User name, Password and Bank code. For downloading the relevant form, AD banks may follow the link 'Download Returns Package' and download the form. After following the successive steps, AD banks may upload the file. For User name and Password, AD banks may write at [fedcoecbd@rbi.org.in](mailto:fedcoecbd@rbi.org.in) along with contact details. Clarification required, if any, may also be sent to the aforesaid email of the Reserve Bank and/ or may be communicated at Telephone No. 022-22601000 (extension-2715). Guide for using XBRL website is also available under the Help option on the same page. Format of this statement is also available at Annex V of Part V of [Master Directions – Reporting under Foreign Exchange Management Act dated January 1, 2016](#), as amended from time to time.

**18. Role of ADs:** While the primarily responsibility of ensuring adherence to the TC policy lies with the importer, the ADs are also expected to ensure compliance with applicable parameters of the trade credit policy / provisions of Foreign Exchange Management Act, 1999 by their constituents. As the Reserve Bank has not prescribed any format or manner in which TC arrangements / loan agreements are to be documented, ADs may consider any document to satisfy themselves with the underlying TC arrangement. ADs should ensure that there is no double financing on account of these transactions between a unit or a developer in a SEZ including FTWZ for purchase of non-capital and capital goods within an SEZ including FTWZ or from a different SEZ including FTWZ. ADs should also ensure that for import of non-capital goods, the period of TC, as applicable, is lower of operating cycle or one year (three years for shipyards / shipbuilders).



### PART III – STRUCTURED OBLIGATIONS

**19. Non-resident guarantee for domestic fund based and non-fund based facilities:** Borrowing and lending in Indian Rupees between two residents does not attract any provisions of the Foreign Exchange Management Act, 1999. In cases where a Rupee facility which is either fund based or non-fund based (such as letter of credit / guarantee / letter of undertaking / letter of comfort) or is in the form of derivative contract by residents that are subsidiaries of multinational companies, is guaranteed by a non-resident (non-resident group entity in case of derivative contracts), there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The arrangements shall be with the following terms:

- i. The non-resident guarantor may discharge the liability by i) payment out of rupee balances held in India or ii) by remitting the funds to India or iii) by debit to his FCNR(B)/NRE account maintained with an AD bank in India.
- ii. In such cases, the non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR(B)/NRE account. However, in case the liability is discharged by payment out of Rupee balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.
- iii. General Permission is available to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee.
- iv. In cases where the liability is met by the non-resident out of funds remitted to India or by debit to his FCNR(B)/NRE account, the repayment may be made by credit to the FCNR(B)/NRE/NRO account of the guarantor provided, the amount remitted/credited shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.
- v. <sup>13</sup>

**20. Facility of Credit Enhancement:** The facility of credit enhancement by eligible non-resident entities (viz. Multilateral financial institutions (such as, IFC, ADB, etc.) / regional financial institutions and Government owned (either wholly or partially) financial institutions, direct/ indirect equity holder) to domestic debt raised through issue of capital market instruments, such as Rupee denominated bonds and debentures, is available to all borrowers eligible to raise ECB under automatic route subject to the following conditions:

- i. The underlying debt instrument should have a minimum average maturity of three years;

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<sup>13</sup> Deleted vide [A.P. \(DIR Series\) Circular No. 05 dated June 09, 2022](#). Prior to deletion the deleted portion read as “AD Category I banks are required to furnish at quarterly interval details of guarantees availed of/ invoked, by all its branches, in a format specified by RBI (Annex I of Part X of [Master Directions – Reporting under Foreign Exchange Management Act dated January 1, 2016](#), as amended from time to time), to the Chief General Manager-in-Charge, Foreign Exchange Department, External Commercial Borrowings Division, Reserve Bank of India, Central Office Building, 11th floor, Fort, Mumbai – 400 001 so as to reach the Department not later than 10th day of the month following quarter to which the data pertain to”.

- ii. Prepayment and call/ put options are not permissible for such capital market instruments up to an average maturity period of 3 years;
- iii. Guarantee fee and other costs in connection with credit enhancement will be restricted to a maximum 2 per cent of the principal amount involved;
- iv. On invocation of the credit enhancement, if the guarantor meets the liability and if the same is permissible to be repaid in foreign currency to the eligible non-resident entity, the all-in-cost ceilings, as applicable to the relevant maturity period of the TC/ECB, as per the extant guidelines, is applicable to the novated loan.
- v. In case of default and if the loan is serviced in Indian Rupees, the applicable rate of interest would be the coupon of the bonds or 250 bps over the prevailing secondary market yield of 5 years Government of India Security, as on the date of novation, whichever is higher;
- vi. NBFC-IFC proposing to avail of the credit enhancement facility should comply with the eligibility criteria and prudential norms laid down in the [circular DNBS.PD.CC No.168/03.02.089/2009-10 dated February 12, 2010](#) and in case the novated loan is designated in foreign currency, the IFC should hedge the entire foreign currency exposure; and
- vii. The reporting arrangements as applicable to the ECB would be applicable to the novated loans.

## APPENDIX

### List of Notifications/Circulars which have been consolidated in this Master Direction

Sr. No.	Notification	Date
1	<a href="#">FEMA 3R/2018-RB</a>	December 17, 2018
2	<a href="#">FEMA 8/2000-RB</a>	May 03, 2000
3	<a href="#">FEMA 187/2009-RB</a>	February 03, 2009

Sr. No.	Circular	Date
1	<a href="#">A.P. (DIR Series) Circular No. 40</a>	March 02, 2010
2	<a href="#">A.P. (DIR Series) Circular No. 28</a>	September 26, 2011
3	<a href="#">A. P. (DIR Series) Circular No. 20</a>	August 29, 2012
4	<a href="#">A.P. (DIR Series) Circular No.120</a>	June 26, 2013
5	<a href="#">A. P. (DIR Series) Circular No. 56</a>	January 6, 2015
6	<a href="#">A. P. (DIR Series) Circular No. 17</a>	January 16, 2019
7	<a href="#">A. P. (DIR Series) Circular No. 18</a>	February 08, 2019
8	<a href="#">A. P. (DIR Series) Circular No. 23</a>	March 13, 2019
<sup>14</sup> 9	<a href="#">A.P. (DIR Series) Circular No. 04</a>	July 30, 2019
<sup>15</sup> 10	<a href="#">A.P. (DIR Series) Circular No. 01</a>	April 07, 2021
<sup>16</sup> 11	<a href="#">A.P.(DIR Series) Circular No. 19</a>	December 08, 2021
<sup>17</sup> 12	<a href="#">A.P.(DIR Series) Circular No. 05</a>	June 09, 2022
<sup>18</sup> 13	<a href="#">A.P. (DIR Series) Circular No. 11</a>	August 01, 2022

<sup>14</sup> Inserted vide [A.P.\(DIR Series\) Circular No. 04 dated July 30, 2019.](#)

<sup>15</sup> Inserted vide [A.P.\(DIR Series\) Circular No. 01 dated April 07, 2021](#)

<sup>16</sup> Inserted vide [A.P.\(DIR Series\) Circular No. 19 dated December 08, 2021](#)

<sup>17</sup> Inserted vide [A.P. \(DIR Series\) Circular No. 05 dated June 09, 2022.](#)

<sup>18</sup> Inserted vide [A.P. \(DIR Series\) Circular No. 11 dated August 01, 2022.](#)