India: ECB For Low Cost Affordable Housing Projects

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Foreign Investment comprises of investment in capital and investment through borrowings. Investment in capital is channelled through Foreign Direct Investment etc. Investment through borrowings is covered by way of External Commercial Borrowings, which is governed by *Foreign Exchange Management (Borrowing or lending in Foreign Exchange) Regulations, 2000*.

As per newspaper reports Indian Enterprises during the course of last few years have accessed significant amounts of foreign debt. In 2011-12, Indian Companies raised a borrowing of about USD 36 billion. Further, borrowings in September, 2012 were recorded to be USD 2.78 billion. According to the Reserve Bank of India (RBI) data, most of the borrowings were for import of capital goods, modernisation, new projects and rupee expenditure for import of capital goods.

EXTERNAL COMMERCIAL BORROWINGS

External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitised instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares) availed from non-resident lenders with a minimum average maturity of 3 years. ECB can also be in the form of credit from official export credit agencies and commercial borrowings from Multilateral Financial Institutions like IFC, ADB etc.

ECBs and Trade Credits availed by residents in India are governed by clause (d) of sub-section (3) of Section 6 of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Borrowing or lending in Foreign Exchange) Regulations, 2000 dated May 3, 2000 as amended from time to time, and Master Circular on ECB[1].

The Master Circular on ECB provides for the borrowers who are eligible to raise ECB and also the recognised lenders. Such eligible borrowers can raise ECB under the following two routes:

1. **Automatic Route**: The Master Circular specifies the eligible borrowers, recognised lenders and the maximum amount that can be raised by respective eligible borrowers under this route, without the approval of the Government.
2. **Approval Route:** Under the Approval Route, prior permission of the Government is required for raising ECB of the amount exceeding the permissible amount under the Automatic Route, or any such amount specifically permitted to be raised by the eligible borrowers under the Approval Route.

The ECBs raised under either of the two routes can be utilised only for the permissible end-uses under the respective routes as provided under Master Circular.

ECB FOR LOW COST AFFORDABLE HOUSING PROJECTS

The RBI recently allowed developers/builders with good track record in terms of quality and delivery and proven financial track record to avail ECB to develop low-cost houses. The NHB and those HFCs registered with NHB have also been allowed to avail ECB to finance the prospective owners of these housing units.

Poverty, unemployment, paucity of land and demand – supply constraints have rendered housing unaffordable for Lower and Middle Income Groups of Indian population. Keeping in view of the above factors and the announcement by the Finance minister in the Union Budget 2012 – 13, the Government of India, under the process of reviewing and liberalising the policy related to ECB and to meet the objective of providing housing for low income groups, allowed ECB for low cost affordable housing projects as a permissible end use under the *Approval Route* vide A.P. (DIR Series) Circular No. 61 dated December 17, 2012 (Circular) issued by RBI.

"*Affordability*" as a concept is very generic and holds different meanings for different people and basically derives its defining criteria from the economy of a nation. Countries define *affordable housing* differently to present the economic potential of an individual buying a house.

The Circular issued by RBI defines the term "*low cost affordable housing project*" for the purpose of ECB as a project in which at least 60 per cent of the permissible Floor Space Index (FSI) would be for units having maximum carpet area up to 60 square metres.

Further, the *National Urban Housing and Habitat Policy (NUHHP), 2007* defines "*affordable housing*"as:

"Houses ranging from about 300 square feet (super built up area) for EWS (Economically Weaker Section), 500 square feet for LIG (Low Income Group) and 600 square feet to 1200 square feet for MIG (Middle Income Group), at costs that permit repayment of home loans in monthly instalments not exceeding 30 per cent to 40 per cent of the monthly income of the buyer.

In terms of carpet area, an EWS house would be taken as having a minimum 25 square metres of carpet area, a LIG house would be limited to a maximum of 48 square metres of carpet area, and a MIG house would be limited to a maximum of 80 square metres of carpet area."

RBI has allowed raising of ECB in this category under approval route for the purpose of the following projects:

- Low cost affordable housing projects (as defined there under);
- Slum rehabilitation projects, whose eligibility is to be based on the parameters set by Central Sanctioning and Monitoring Committee of the Affordable Housing in Partnership (AHP) Scheme constituted under the Chairmanship of Secretary, Housing and Urban Poverty Alleviation (HUPA).

The eligible borrowers include:

- **Developers/ Builders**: The developers/ builders should have proven track record based on the following criteria:

1. They should be a company registered under the Indian Companies Act, 1956;
2. They should have a minimum of 5 years' experience in undertaking residential projects and should have a good track record in quality and delivery;
3. They should not have defaulted in any of their financial commitments to banks/ financial institutions (FIs) or any other agencies;
4. The project should not be a matter of litigation;
5. The project should conform to the Master Plan/ Development Plan of the area, and the layout should conform to the land use by the town and planning department;
6. Necessary clearances from various bodies including Revenue Department should be available on records.

- **Housing Finance Companies (HFCs)**: HFCs can avail of ECB for financing prospective owners of low cost affordable housing units, subject to the fulfilment of the following conditions:

1. HFC should be registered with the National Housing Bank (NHB) and should operate as per the guidelines issued by NHB;
2. The minimum paid-up capital (as per latest audited balance sheet) should not be less than INR 50 (Fifty) crore;
3. The minimum Net Owned Fund (NOF), for past three financial years should not be less than INR 300 (Three hundred) crore;
4. ECB raised should be within the HFC's overall borrowing limit of 16 times their NOF;
5. The net non-performing assets should not exceed 2.5% of the net advances;
6. The maximum loan amount sanctioned to the individual buyer is capped at INR 25 (Twenty-five) lakh provided the cost of the individual housing unit does not exceed INR 30 (Thirty) lakh; and,
7. The ECB should be swapped into Rupees for the entire maturity on fully hedged basis.

- **National Housing Bank(NHB):** NHB can raise ECB for financing low cost housing projects of individual borrowers, and for on-lending to those developers/ builders who fulfil the requisite conditions as stated above, subject to the interest rate spread set by RBI.

The ECB proceeds raised can be utilised only for low cost affordable housing projects and cannot be utilised for acquisition of land. Further, developers/ builders/ HFCs/ NHB are not allowed to raise Foreign Convertible Currency Bonds (FCCBs) under this scheme.

The aggregate limit of USD 1 (one) billion for raising ECB under the low cost affordable housing scheme had been set for the Financial Year 2012-13, subject to annual review.

Builders/ Developers meeting the eligibility criteria have to apply to NHB in the prescribed format. NHB has been empowered to act as a *nodal agency* for deciding a project's eligibility as low cost affordable housing project, before forwarding the application to RBI for consideration under the approval route. Once NHB decides to forward an application for consideration of RBI, the prospective borrower i.e. the builder/ developer would be advised by the NHB to approach RBI for availing ECB through his Authorised Dealer in the prescribed format.

Following the RBI circular the nodal agency NHB has also notified the guidelines setting out the procedure for submitting the application for ECB with NHB. Under these guidelines the NHB also has set out the monitoring mechanism both off-site as well as on-site for projects that have availed ECB.

The Circular also clarifies that all other ECB parameters, such as, recognised lender, minimum maturity period, all-in-cost

ceilings, reporting requirements etc. shall be governed as per the conditions mentioned under Master Circular on ECB issued by RBI.

Before drawing the down ECB the borrower has to obtain a *Loan Registration Number (LRN)* by filing Form 83 through a designated AD Bank. Further, the applicants are required to follow *reporting requirements* irrespective of the investment route. The borrowers are required to submit *ECB-2* Return certified by the designated AD Bank on monthly basis so as to reach Reserve Bank within 7 (seven) working days from the close of month to which it relates. Further, the borrowers are also required to comply with the ECB guidelines relating to utilization of ECB proceeds, amount and maturity, all-in-cost ceiling, guarantee etc. as given specifically for Approval Route.

CONCLUSION

Considering the huge demand for building such projects and for loans for low-cost homes and also considering the appetite of developers, HFCs and NHB the RBI and the Central Government should review and raise the financial limit for this Financial Year and set a clear policy road map enabling stakeholders to avail this new ECB window made available for low cost housing projects.

Footnote

1 Current Master Circular on External Commercial Borrowings and Trade Credits was issued on July 02, 2012

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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