India – External Commercial Borrowings (ECB) Policy – new ECB framework

The ECB regime provides a framework for Indian corporates to avail foreign currency loans from an overseas lender. Although he ECB regime has undergone significant changes in the past years, it is still perceived as stringent, with many restrictions.

On 16 January 2019, the Reserve Bank of India (RBI) has issued A.P (Dir Series) Circular No. 17 rationalising the extant framework for ECB and Rupee denominated bonds to further improve the ease of doing business. Changes are with immediate effect.

Major liberalisation/rationalisation in the new framework are as under:

- Tracks I and II under the existing framework are merged as "Foreign Currency denominated ECB" and Track III and Rupee Denominated Bonds framework are combined as "Rupee Denominated ECB" to replace the current four-tiered structure. The framework is instrument-neutral.
- The list of Indian entity has been expanded to include limited liability partnerships.
- The list of eligible borrowers has been expanded to include all entities eligible to receive foreign direct investment. As consequence, service companies and trading entities (previously excluded) are now eligible for ECB.
- Recognised lender: the definition has been expanded to include any entity who is a resident of a country which is FATF or IOSCO compliant. This change increases the lending options and allows various new lenders in ECB space while strengthening the AML/CFT framework.
- The minimum average maturity period (MAMP) has been kept at 3 years for all ECBs (against 3/5/10 based on the quantum and purpose of ECB raised previously), irrespective

of the amount of borrowing in lieu of various layers of MAMPs as at present, except the borrowers specifically permitted in the circular to borrow for a shorter period.

- Individual Annual Borrowing Limits: all eligible borrowers can now raise ECBs up to USD 750 million or equivalent per financial year under the automatic route replacing the existing sector wise limits.

- End-Use Restrictions (Negative List): the revised framework has introduced further prohibition for the end-use of ECB funds.

- Introduction of late submission fee for delay in prescribed reporting under the ECB framework (which could be in the range of Rs 5,000-50,000 per year, or Rs 100,000 per year, depending on the delay) to obviate the need for compounding these contraventions.

For any additional information, contact Lisbeth Lanvers-Shah or Olivier Monange.