

FEMA Updates for the month of November 2018

External Commercial Borrowings (ECB) Policy:

I. Review of Minimum Average Maturity and Hedging Provisions:

Master Direction No.5 dated 1st January, 2016 on “External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers”, has been amended from time to time, in terms of which certain eligible borrowers raising foreign currency denominated ECBs under Track I, having a minimum average maturity requirement of 5 years, are mandatorily required to hedge their ECB exposure fully.

The extant provisions of Minimum Average Maturity Period, Eligible Borrowers and Hedging requirements provisions have been reviewed and it has been decided in consultation with the Government of India, to amend the above referred provisions of the ECB framework.

- i. **Minimum average maturity:** Reduce the minimum average maturity requirement for ECBs in the infrastructure space raised by eligible borrowers from 5 years to 3 years.
- ii. **Hedging requirements:** Reduce the average maturity requirement from extant 10 years to 5 years for exemption from mandatory hedging provision applicable to ECBs raised by above referred eligible borrowers. Accordingly, the ECBs with minimum average maturity period of 3 to 5 years in the infrastructure space will have to meet 100% mandatory hedging requirement. Further, it is also clarified that ECBs falling under the aforesaid revised provision but raised prior to the date of this circular will not be required to mandatorily roll-over their existing hedges.

For more details, refer Notification No. RBI/2018-19/71, A.P. (DIR Series) Circular No.11 dated 6th November, 2018.

II. Foreign Exchange Management (Deposit) (Amendment) Regulations, 2018:

RBI vide Notification No. FEMA 5 (R)(1)/2018-RB dated 9th November, 2018 has notified the amended Deposit Regulations named as “Foreign Exchange Management (Deposit) (Amendment) Regulations, 2018” by making an amendment to “Foreign Exchange Management (Deposit) Regulations, 2016, Notification No. FEMA 5(R)/2016-RB dated 1st April, 2016.”

The major amendments are related to Regulation-7, Schedule-3, 4 and 5.

Markable amendments with regard to FDI:

1. An Authorized Dealer in India may allow a Foreign Portfolio Investor (FPI) and a Foreign Venture Capital Investor (FVCI), both registered with the Securities and Exchange Board of India (SEBI) under the relevant SEBI regulations to open and maintain a non-interest bearing foreign currency account for the purpose of making investment in accordance with FEM (Transfer or issue of security by a person resident outside India) Regulations, 2017, as amended from time to time.
2. For the purposes of reporting of FDI, date of transfer of funds into the bank account of the issuer or transferor of capital instruments/convertible notes, as the case may be, shall be the relevant “***date of remittance***”.

For more details, refer gazette notification dated 9th November, 2018.