February 2026

Key amendments to the external commercial borrowing regime under the 2026 borrowing and lending regulations

The Reserve Bank of India ("**RBI**") has issued the Foreign Exchange Management (Borrowing and Lending) (First Amendment) Regulations, 2026 ("**ECB Regulations**") on February 16, 2026. It substantially revises the framework governing External Commercial Borrowings ("**ECBs**").

The revised regime consolidates eligibility, end-use, maturity, cost, security, refinancing, conversion and reporting requirements into a more structured framework, while introducing substantive changes to borrowing limits, strategic use of proceeds, and compliance obligations.

This Prism summarises the key changes introduced by the ECB Regulations and analyses their practical implications.

Key Changes

End-use restrictions – Introduction of Regulation 3A

Regulation 3A under the ECB Regulations codifies and refines the end-use restrictions for ECB proceeds. The ECB Regulation establishes an exhaustive list of prohibited end-uses.

1. **Prohibition on chit funds and nidhi companies**: Borrowed funds cannot be utilised for chit funds or nidhi companies.
2. **Real estate and construction-development projects**: ECB proceeds remain prohibited for 'real estate business', subject to defined exclusions. The revised framework:
    a) clarifies that 'real estate business' refers to purchase, sale or lease of land or immovable property with a view to earning profit and does not include purchase, sale and lease (not amounting to transfer) of land or immovable property for the purpose of the permitted activities set out in (b) below);
    b) carves out permitted activities such as industrial parks, integrated townships, social economic zones, new industrial projects (including modernisation and expansion of existing units), any activity in the infrastructure sector, construction-development projects, commercial or residential properties for own use and real estate broking services;
    c) introduces the following specific compliance conditions:
        i) in construction-development projects, borrowers may access ECB funds subject to the condition that plot sales occur only after development of trunk infrastructure (roads, water, lighting, drainage and sewerage); and

ii) Industrial parks qualify for ECB financing provided they satisfy prescribed structural parameters. Such parks must comprise at least 10 (ten) discrete units, with no single unit occupying more than 50% of the allocable area. Additionally, the minimum area allocated for industrial activity must constitute at least 66% of the total allocable area. The ECB Regulations provide detailed definition of 'allocable area' based on whether the park consists of developed land plots, built-up space, or a combination thereof.

3. **Securities transactions**: ECB proceeds cannot be used for transactions in listed or unlisted securities, except where undertaken by an Indian entity for corporate actions such as merger, demerger, amalgamation or acquisition of control in compliance with applicable laws.

   The amendment clarifies that such borrowing must be for strategic purposes, i.e., driven by long-term value creation and synergies, and not short-term financial gains.

4. **Agricultural and plantation activities**: General agriculture and plantation remain restricted, subject to specified exceptions such as controlled-environment cultivation, seed production, animal husbandry, aquaculture and select plantation crops, services related to agro and allied sectors, tea, coffee, rubber, cardamom, palm oil tree, olive oil tree plantation. The amendment provides a detailed explanation of 'controlled conditions', offering interpretative clarity.

5. **Prohibition on transferable development rights trading**: The ECB Regulations prohibit deployment of ECB proceeds for trading in transferable development rights.

6. **Prohibition on certain loan repayments and on-lending**: ECB proceeds cannot be used to:

   a) repay Indian Rupee ("**INR**") loans that were themselves used for restricted end-uses;

   b) repay INR loans classified as non-performing assets; and

   c) on-lend for purposes that are themselves restricted under the ECB framework.

The ECB Regulations have thus clarified the definition of real estate business and expressly carved out activities which are permitted subject to the caveats mentioned therein. Similarly, exceptions have also been carved out for agricultural and animal husbandry as well as plantation. The restriction on ECBs funding the interest costs has been removed. A substantial change has been in permitting ECBs for transactions undertaken by an Indian entity for corporate actions such as merger, demerger, amalgamation, arrangement, or acquisition of control in accordance with the applicable Act under which such entity is incorporated/established, the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2016, as applicable. Therefore, ECB's funding acquisition of shares appear to be for acquiring 'control'. It is however clarified that the borrowing must be availed for strategic purposes only, i.e. those driven by the core objective of creating long-term value through potential synergies, rather than for short-term gains. Through Regulation 3A(h) and (i) of the ECB Regulations, it is clarified that one cannot do indirectly what one is prohibited to do directly.

Eligible borrowers

Any person resident in India (other than individuals), incorporated or established under a Central or State Act, qualifies as an eligible borrower, subject to sectoral permissions. Entities under restructuring or corporate insolvency resolution may raise ECB only if expressly permitted under the approved plan. Further, entities facing pending investigation or adjudication under the FEMA may still raise ECB, provided full disclosure is made in Form ECB 1 or Revised Form ECB 1.

Basis this change, limited liability partnerships and companies that are not permitted to raise foreign direct investment can now borrow through ECBs. Permissibility of borrowing of ECBs by Infrastructure Investment Trusts/ Real Estate Investment Trusts needs further clarity.

Recognised Lenders

Recognised lenders now include:

1. persons resident outside India;
2. overseas branches of RBI-regulated entities; and
3. financial institutions[1] or branches established in an International Financial Services Centre (IFSC).

The requirement of a recognised lender to be compliant with the Financial Action Task Force or International Organisation of Securities Commissions has been done away with.

Currency of borrowing

Eligible borrowers may denominate ECB in Foreign Currency ("**FCY**") or INR, providing flexibility in liability management. The regulations permit currency conversion across foreign currencies, from one FCY to another FCY, from FCY to INR, and from INR to FCY.

Currency conversion must occur at the exchange rate prevailing on the agreement date for such conversion, or at an exchange rate that does not result in liability exceeding that calculated using the prevailing rate on the agreement date.

Borrowing limits – revised threshold

The ECB Regulations establish a dual ceiling approach, permitting eligible borrowers to raise ECB up to the higher of:

1. outstanding ECB up to USD 1 billion (US Dollars one billion); or
2. total outstanding borrowings (external and domestic) up to 300% of net worth (based on last audited standalone financials).

For purposes of calculating outstanding borrowing:

1. non-fund-based credit and mandatorily convertible instruments are excluded from the computation; and
2. the borrowing cap does not apply to entities regulated by financial sector regulators.

Basis this, the limits for borrowings have been revised from the earlier limits of USD 750,000,000 (US Dollars seven hundred and fifty million) to USD 1,000,000,000 (US Dollars One Billion) and even higher if the net worth permits. Further, non-banking financial companies, fintech companies and other entities regulated by financial sector regulators can borrow uncapped amounts.

Maturity

1. The regulations prescribe a minimum average maturity period ("**MAMP**") of 3 (three) years for ECB. Manufacturing entities may also raise ECBs with an average maturity between 1 (one) and 3 (three) years, subject to a cap of USD 150,000,000 (US Dollars one hundred and fifty million) on the aggregate outstanding amount of such shorter-tenor borrowings.
2. MAMP requirements are relaxed in specific cases, including:
    a) conversion into non-debt instruments;

[1] The term 'financial institution' carries the meaning assigned to it under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015,

   b) repayment from non-debt instruments proceeds;
   c) refinancing;
   d) debt waiver; and
   e) corporate actions such as closure, acquisition of control, merger/demerger, resolution or liquidation.
3. Call and put options cannot be exercised before completion of MAMP.

This is a significant relaxation from the earlier regulations which provided much longer MAMPs for certain events including general corporate purposes and refinancing of INR debt. Based on these ECB Regulations the MAMP will now be 3 (three) years even for ECBs used for general corporate purposes and refinancing INR debt. Further, MAMP not being required for the events mentioned above is also a welcome change and this will also avail raising ECB as a bridge to foreign equity.

Cost of borrowing

Borrowing cost must align with prevailing market conditions. For ECBs with maturity below 3 (three) years, cost must comply with the trade credit ceiling. For fixed-rate loans, the all-in-cost benchmark (floating rate plus swap spread) must remain within prescribed ceilings. Penal interest and prepayment charges must also reflect market standards and not capped at 2% as earlier.

This is again a welcome change since the caps on interest and penal charges have been removed and the same has been left to market dynamics.

Receipt of ECB proceeds

Borrowers may drawdown ECB only after obtaining a Loan Registration Number ("**LRN**") from RBI through the designated Authorised Dealer ("**AD**") Category I bank.

Where ECBs are intended for rupee expenditure within India, the proceeds must be credited to an INR account with the designated AD Category I bank by the end of the month following receipt. Until utilised, these rupee funds may be parked in an unencumbered fixed deposit with that bank for a tenor of up to 1 (one) year.

Proceeds meant for permitted FCY expenditure may be credited to an FCY account in India with the designated AD Category I bank or an FCY account outside India, in accordance with the Foreign Exchange Management (FCY Accounts by a Person Resident in India) Regulation, 2015. Pending utilisation, such funds may be invested outside India in unencumbered fixed deposits of up to 1 (one) year or unencumbered debt instruments with original maturity up to 1 (one) year.

Security and guarantees

1. ECB obligations may be secured by:
   a) charge over immovable, movable, financial or intangible assets (including intellectual property rights);
   b) guarantees issued in accordance with the applicable Foreign Exchange Management (Guarantees) Regulations, 2026.
2. Securing ECBs will be subject to the following conditions:
   a) prior No-Objection Certificate ("**NOC**") from existing domestic lenders for encumbered assets;
   b) enforcement limited strictly to the outstanding ECB claim;

   c) no automatic right of acquisition of Indian assets by overseas lenders/security trustee;
   d) RBI-regulated entities are prohibited from issuing guarantees for ECBs.
3. Upon enforcement or invocation of security, the lender's claim is restricted to the outstanding claim against the ECB. The transfer of assets or property must comply with applicable FEMA provisions, encumbered moveable assets may be exported subject to obtaining NOC from the existing Indian lenders. Where asset acquisition by the lender is not permitted under the FEMA, sale proceeds from transfer to Indian residents may be remitted to extinguish outstanding ECB claims.

Refinancing and Conversion

1. **Refinancing**: Eligible borrowers may refinance existing ECB, partially or fully, through fresh ECB, subject to the condition that refinancing does not result in failure to meet the MAMP requirement applicable to the original borrowing. For multiple borrowings, weighted outstanding maturity determines compliance.
2. **Conversion into non-debt instruments**: ECB (including matured but unpaid debt) may be converted into equity or other non-debt instruments, subject to:
   a) compliance with Foreign Exchange Management (Non-Debt Instruments) Rules, 2019;
   b) no additional cost to lender for such conversion;
   c) lender consent; and
   d) and consent of other lenders is available or at minimum, information regarding conversion is exchanged with other lenders.

   Prudential regulations, including restructuring norms, apply if the borrower has availed credit facilities from an entity regulated by RBI, including its foreign branches or subsidiaries.

   The ECB liability eligible for conversion is determined using the exchange rate prevailing on the agreement date for conversion or an exchange rate not resulting in higher liability than that calculated using the prevailing rate on the agreement date.

Hedging

The stipulations in relation to hedging have been removed.

Change of parameters, terms and conditions

Borrowers may modify ECB parameters, terms, and conditions subject to lender consent and compliance with Schedule provisions under the ECB Regulations. Tenor extensions trigger applicability of prudential regulations, including restructuring norms, where the borrower has availed credit facilities from Reserve Bank-regulated entities. Changes to the designated AD Category I bank require obtaining a NOC from the existing designated bank, ensuring continuity of monitoring and reporting.

Reporting

Eligible borrowers must submit the following forms through the designated AD Category I bank in formats prescribed by RBI:

1. Form ECB 1 – for obtaining LRN;
2. revised Form ECB 1 – for reporting changes within 7 (seven) calendar days from month-end; and

3. Form ECB 2 – monthly reporting of drawdowns and debt servicing within 7 (seven) calendar days from month-end.

Pending investigations disclosed in Form ECB 1 must be reported by the designated AD Category I bank to enforcement authorities. ECB loans with LRN obtained prior to the new regulations continue under earlier terms, except that reporting must comply with the revised regime.

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JSA has a widely recognised market leading banking & finance practice in India. Our practice is partner led and is committed to providing quality professional service combining domain knowledge with a constructive, consistent, comprehensive and commercial approach to issues. Clients trust our banking lawyers to take a practical and business-oriented approach to achieving their objectives. Our lawyers have a clear understanding of the expectations and requirements of both sides to a financing transaction and provide tailored advice to each client's needs. The practice is especially praised for its accessibility and responsiveness and its ability to work well with international firms and clients. We represent a variety of clients including domestic and global banks, non-banking finance companies, institutional lenders, multi-lateral, developmental finance and export credit institutions, asset managers, funds, arrangers and corporate borrowers in different sectors on a wide range of financing transactions.

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Our practice has been consistently ranked in the top-tier for several years, and several of our partners are regarded highly, by international publications such as Chambers and Partners, IFLR, Asia Law, Legal 500, Asia Legal Business, IBLJ and Leaders League.

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