Guidelines on Policies and Procedures for External Commercial Borrowings

1 ECB Policy

1. External Commercial Borrowings (ECBs) are defined to include commercial bank loans, buyer's credit, suppliers' credit, and instruments such as Floating Rate Notes and Fixed Rate Bonds, etc., credit from official export credit agencies and commercial borrowings from the private sector window of Multilateral Financial Institutions such as International Finance Corporation (Washington), ADB etc.

2. ECBs are being permitted by the Government as a source of finance for Indian Corporates for expansion of existing capacity as well as for fresh investment.

3. The policy seeks to keep up an annual cap or ceiling on access to ECB, consistent with prudent debt management.

4. The policy also seeks to give greater priority for projects in the infrastructure and core sectors such as Power, Oil Exploration, Telecom, Railways, Roads and Bridges, Ports, Industrial Parks and Urban Infrastructure, etc., and the export sector. Development Financial Institutions, through their sub-lending against the ECB approvals are also expected to give priority to the needs of medium and small scale units.

5. Applicants will be free to raise ECB from any internationally recognised source such as banks, export credit agencies, suppliers of equipment, foreign collaborators, foreign equity-holders, international capital markets, etc. Offers from unrecognised sources will not be entertained.

AVERAGE MATURITIES FOR ECB

6. ECBs have the following minimum average maturities:
   (a) Minimum average maturity of three years for external commercial borrowings equal to or less than USD 15 million equivalent;
   (b) Minimum average maturity of seven years for external commercial borrowings greater than USD 15 million equivalent;
(c) 100 per cent Export Oriented Units (EOUs) are permitted ECB at a minimum average maturity of three years even for amounts exceeding USD 15 million equivalent;

(d) Indian Development Financial Institutions (DFIs), corporates engaged in infrastructure projects in Telecommunications and Oil Exploration and Development (excluding refining) and ship acquisition projects will be permitted to raise ECB at a minimum average maturity of five years even for borrowings exceeding USD 15 million equivalent; and

(e) Bonds and FRNs can be raised in tranches of different maturities as long as the average maturity of the different tranches within the same overall approval taken together satisfies the maturity criteria prescribed in the ECB guidelines. In such cases, it is expected that longer term borrowings would necessarily precede that of the shorter tenors. The longer the initial tenor the shorter the subsequent tranches can be within the average maturity.
USD 3 MILLION SCHEME

7. All Corporates and Institutions are permitted to raise ECB up to USD 3 million equivalent at a minimum simple maturity of 3 years. Borrowers may utilise the proceeds under this window for general corporate objectives without any end-use restrictions excluding investments in stock-markets or in real estate. The loan amount may be raised in one or more tranches subject to the caveat that the total outstanding loan under this scheme at any point of time should not exceed USD 3 million. Each tranche should have a minimum simple maturity of 3 years.

As a measure of simplification and de-regulation for the benefit of corporates and institutions, Government have delegated the sanctioning powers to Reserve Bank of India (RBI) under this scheme with effect from 15 December 1996.

Corporates and Institutions are advised to submit their applications under this scheme to the Exchange Control Department of RBI, Bombay.

EXPORTERS/FOREIGN EXCHANGE EARNERS

8. Corporates who have foreign exchange earnings are permitted to raise ECB up to twice the average amount of annual exports during the previous three years subject to a maximum of USD 100 million without end-use restrictions, i.e. for general corporate objectives excluding investments in stock markets or in real estate. The minimum average maturity will be three years up to USD 15 million equivalent and five years for ECBs exceeding USD 15 million. The maximum level of entitlement in any one year is a cumulative limit and debt outstanding under the existing USD 15 million exporters scheme will be netted out to determine annual eligibility.

INFRASTRUCTURE PROJECTS

9. Holding Companies/promoters will be permitted to raise ECB up to a maximum of USD 50 million equivalent to finance equity investment in a subsidiary/joint venture company implementing infrastructure projects. This flexibility is being given in order to enable
domestic investors in infrastructure projects to meet the minimum domestic equity requirements.

10. In case the debt is to be raised by more than one promoter for a single project then the total quantum of loan by all promoters put together should not exceed USD 50 million.

11. **LONG-TERM BORROWERS**

(i) ECB of ten years average maturity and above will be outside the ECB ceiling, though MOF's prior approval for such borrowings would continue to be necessary. The extent of debt under this window will be reviewed by the Government periodically.

(ii) Funds raised under this window will not be subject to end-use restriction other than that relating to investment in real estate and stock market up to the extent of:

(a) USD 100 million if the maturity is 10 years and above but less than 20 years.

(b) USD 200 million if the average maturity is 20 years and above.

(iii) Amounts raised above the limit at (ii)(a) and (b) will be subject to the normal end-use conditions prescribed under the general ECB guidelines.

(iv) To be eligible for this purpose, the long term debt instrument should not include any 'put' or 'call' options potentially reducing the stated maturities.

(v) Development Financial Institutions may raise ECB under this window in addition to their normal annual allocation covered by the cap.

(vi) Borrowings under this long-term window which are exempted from the cap are not eligible for the purpose of enhancing the maturity of shorter term borrowing prescribed under normal ECB window to reach the required average maturity. In case borrowings above 10 years maturity are to be used to lengthen the maturity of shorter term borrowing then the entire amount must be treated as within the cap.

(vii) Utilisation of the ECB approved earlier under the regular ECB cap will not be a limiting factor for considering proposals under the long term maturity window. However, additional borrowings under either of the window, i.e. regular or under long-term maturity—is subject to utilisation of earlier approvals in the same window.

(viii) Corporates may raise these borrowings either through FRN/Bond Issues/Syndicated Loan etc. as long as the maturity and the interest spread are maintained as per the guidelines.
(ix) Project appraisal report is not necessary if funds are raised under the long-term maturity window to be utilised for general corporate objectives subject to the limits prescribed at para (ii) above.

**ON-LENDING BY DFIS AND OTHER FINANCIAL INTERMEDIARIES**

12. While DFIs are required to adhere to the average maturity criteria prescribed, namely, minimum of five years for loans more than USD 15 million equivalent and minimum three years for loans less than or equal to USD 15 million equivalent for their borrowings, they are permitted to on-lend at different maturities. They may also on-lend for project-related Rupee expenditure. However, other financial intermediaries are required to adhere to the general ECB guidelines on maturity as well as end-use in their on-lending programmes.

13. All financial intermediaries, including DFIs, are required to on-lend their external commercial borrowings within 12 months of drawdown.

**END-USE REQUIREMENTS**

14. (a) External commercial loans are to be utilised for import of capital goods and services (on FOB or CIF basis). However, in the case of projects in the following infrastructure areas, ECB can be utilised for rupee expenditure:

(i) Power,
(ii) Telecommunications (License fee payments would be an approved use of ECB),
(iii) Railways,
(iv) Roads (including bridges),
(v) Ports,
(vi) Industrial Parks, and
(vii) Urban Infrastructure (water-supply, sanitation and sewerage projects as defined in Section 80 IA of Income Tax Act, 1962).

(b) Corporate borrowers will be permitted to raise ECB to acquire ships/vessels from Indian shipyards.
(c) ECB proceeds may also be utilised for project-related rupee expenditure as outlined in paras 7 to 11 above. However, under no circumstances, CB proceeds will be utilised for:

- Investment in stock market,
- Speculation in real estate.

**PROCEEDS FROM BONDS, FRNS AND SYNDICATED LOAN**

15. Corporate borrowers who have raised ECB for import of capital goods and services through Bonds/FRN/Syndicated loans are permitted to remit funds into India. The funds can be utilised for activities as per their business judgement except investment in stock market or in real estate, for up to one year or till the actual import of capital goods and services takes place, whichever is less. In case borrowers decide to deploy the funds abroad till the approved end-use requirement arises, they can do so as per the RBI's extant guidelines. RBI guidelines would have to be strictly adhered to. RBI would be monitoring ECB proceeds parked outside.

Sanction of additional ECB to the Company would be considered only after the Company has certified, through its statutory auditor, that it has fully utilised the amount for import of the capital equipments and services.

**ECB ENTITLEMENT FOR NEW PROJECTS**

16. All infrastructure and greenfield projects will be permitted to avail ECB to an extent of 35 per cent of the total project cost, as appraised by a recognised Financial Institution/Bank, subject to the fulfilment of other ECB guidelines. However, ECB limits for telecom projects are more flexible and an increase from the present 35 to 50 per cent of the project cost (including the licence fee) will be allowed as a matter of course. Greater flexibility may also be allowed in case of power projects and other infrastructure projects based on merits.

**INTEREST RATE FOR PROJECT FINANCING**

17. At present, interest rate limits on ECB for project financing (i.e. to say non-recourse financing) allow interest spreads above LIBOR/US Treasury to be higher than for normal ECB. Ordinarily a spread up to 350 basis points may be allowed. However, keeping market conditions in mind, some flexibility will be permitted in determining the spread.
on merits. In order to give borrowers greater flexibility in designing a debt strategy, up to 50 per cent of the permissible debt may be allowed in the form of subordinated debt at a higher interest rate, provided the composite spread for senior and sub-ordinated debt taken together comes within the overall project financing limit.

OTHER TERMS AND CONDITIONS

18. Apart from the maturity and end-use requirements as per paras above, the financial terms and conditions of each ECB proposal are required to be reasonable and market-related. The choice of the sourcing of ECB, currency of the loan, and the interest rate basis (i.e. floating or fixed), will be left to the borrowers.

SECURITY

19. The choice of security to be provided to the lenders/suppliers-will also be left to the borrowers. However, where the security is in the form of a guarantee from an Indian Financial Institution or from an Indian Scheduled Commercial Bank, counter-guarantee or confirmation of the guarantee by a Foreign Bank/Foreign Institution will not be permitted.
EXEMPTION FROM WITHHOLDING TAX

20. Interest payable by an industrial undertaking in India, related to external commercial borrowings as approved by GOI/RBI would be eligible for tax exemptions as per Section 10(15) (iv) (b), (d) to (g) of the Income Tax Act, 1961. Exemption under Section 10 (15) (iv) (b), (d) to (g) are granted by Department of Economic Affairs while exemption under Section 10 (15) (iv) (c) is granted by Department of Revenue, Ministry of Finance.

APPROVAL UNDER FERA

21. After receiving the approval from ECB Division, Department of Economic Affairs, Ministry of Finance, the applicant is required to obtain approval from the Reserve Bank of India and to submit an executed copy of the Loan Agreement to this Department for taking the same on record, before obtaining the clearance from RBI for drawing the loan. Monitoring of end-use of ECB will continue to be done by RBI.

SHORT-TERM LOAN FROM RBI

22. While ECB for minimum maturity of three years and above will be sanctioned by Department of Economic Affairs, Ministry of Finance, approvals of short term foreign currency loans with a maturity of less than three years will be sanctioned by RBI, according to RBI guidelines.

VALIDITY OF APPROVAL

23. Approvals are valid for a period of six months, i.e. the executed copy of the loan agreement is required to be submitted within this period. In the case of FRNs, Bonds, etc., the same are required to be launched within this period. In case of power projects, the validity of the approval will be for a period of one year and in the case of telecom sector project, it will be nine months from the date of approval. Extension will not be granted beyond the validity period. However, borrowers are free to submit fresh application, after a gap of three months from the expiry of validity period which will be evaluated in the light of the ECB guidelines applicable at that time.
In case of infrastructure projects, however, because financial closure may get delayed for reasons beyond the investor's control, extension of validity may be considered on merits.

**PREPAYMENT OF ECB**

24. Prepayment facility would be permitted up to 20 per cent of the present balance outstanding of each ECB across the board for all maturities. This will be available only once during the currency of the loan.

**REFINANCING THE EXISTING FOREIGN CURRENCY LOAN**

25. Refinancing of outstanding amounts under existing loans by raising fresh loans at lower costs may also be permitted on a case-to-case basis, subject to the condition that the outstanding maturity of the original loan is maintained. Rolling over an ECB will not be permitted.

26. A corporate borrowing overseas for financing its Rupee-related expenditure and swapping its external commercial borrowings with another corporate which requires foreign currency funds will not be permitted.

**LIABILITY MANAGEMENT**

27. Corporates can undertake liability management for hedging the interest and/or exchange rate risk on their underlying foreign currency exposure. Prior approval of this Department or RBI has been dispensed with for concluding or winding up of the following transactions:

   (i) Interest rate swaps,
   (ii) Currency swaps,
   (iii) Coupon swaps,
   (iv) Purchase of interest rate caps/collars, and
   (v) Forward rate agreements.

II. Procedure for Seeking ECB Approval
28. Applications may be submitted by the borrowers in the prescribed format to the Joint Secretary (ECB), Department of Economic Affairs, Ministry of Finance, North Block, New Delhi 110001.

29. The Application should contain the following information:
   (i) An offer letter from the lender giving the detailed terms and conditions;
   (ii) Copy of Project Appraisal Report from a recognised Financial Institution/Bank, if applicable;
   (iii) Copies of relevant documents and approvals from Central/State Governments, wherever applicable, such as FIPB, CCEA and SIA clearances, environmental clearance, techno-economic clearance from Central Electricity Authority, valid licences from Competent Authorities, no objection certificate from Ministry of Surface Transport, evidence of exports/foreign exchange earnings from the statutory auditor based on the bankers realisation certificate, registration with RBI in case of NBFCs, approval for overseas investment from RBI, etc.

REVIEW

30. The ECB guidelines and procedures will be periodically reviewed by the Government in the light of prudent management of external debt, changing market conditions, sectoral requirements, etc.

   In keeping with this provision, certain guidelines have been revised on 9 February 2000. The salient ones are as follows:

   (i) 100 per cent pre-payment from export earnings allowed.
   (ii) Equity investment in infrastructure up from $50 million to $200 million.
   (iii) Corporates can use rupees or dollars to service ECB post-default.
   (iv) Exposure of up to 60 per cent of project cost for 100 per cent EOUs and 50 per cent for infrastructure project is allowed. Two stage ECB clearance instead of three. End-use restrictions only on stock and real estate investments.
   (v) Corporates can charge operating expenses incurred for ECB approvals not resulting in loans.
   (vi) PSUs are not to mention government holding as 5.1 per cent in ECB loan agreements.