CNK & Associates LLP

This issue

In brief

Regulation 6(3) relating to Acceptance of Deposits by issue of Commercial Papers deleted.

ECB for working capital, general corporate purposes and repayment of rupee loan can now be obtained from lenders other than foreign equity holders. Also NBFCs are permitted to avail ECBs for on-lending from any recognised lender

Foreign Exchange Management Act, 1999 (FEMA)

Foreign Exchange Management (Deposit) (Amendment) Regulations, 2019 – Acceptance of Deposits by issue of Commercial Papers

RBI/2019-20/44 A.P. (DIR Series) Circular No. 06 dated 16 August 2019.

According to Regulation 6(3) of FEMA 5(R)/2016-RB, a Company may accept deposits through issue of Commercial Paper **(CP)** to NRI, PIO and FPI.

Definition of deposits provided in Section 2(c) of Companies (Acceptance of Deposits), Rules 2014 excludes any amount received against issue of CPs. Further, Section 45 U(b) of the RBI Act, 1934 describes CP as one of the Money Market Instruments.

Also, FEMA 20(R) already allows investments in CPs issued by the Indian Companies.

Therefore, with a view to bring in consistency in statutory provisions/regulations relating to CPs, Regulation 6(3) of FEMA 5(R)/2016-RB has been deleted vide Notification No. FEMA 5(R)2/2019-RB dated July 16, 2019.

External Commercial Borrowings (ECB) Policy – Rationalization of end-use Provisions

RBI/2019-20/20 A.P. (DIR Series) Circular No. 04 dated 30 July 2019

In order to further relax the ECB regulations, the RBI, vide its circular dated 30 July 2019, has liberalised the restrictions on end-use of funds raised via ECBs

The relaxation in ECB end-use provisions are summarised below:

For any eligible borrower under the ECB framework:

<table>
<tr><th>End Use</th><th colspan="2">Recognised Lender</th><th>Minimum average Maturity period</th></tr>
<tr><td>Working capital / general corporate purposes</td><td rowspan="3">Foreign equity holder (subject to minimum average maturity of 5 years)</td><td rowspan="3">Any recognised lender under ECB framework (other than foreign branches/overseas subsidiaries of Indian banks)</td><td>10 years</td></tr>
<tr><td>Repayment of rupee loan (availed for capital expenditure)</td><td>7 years</td></tr>
<tr><td>Repayment of rupee loan (availed for other than capital expenditure)</td><td>10 years</td></tr>
</table>

For NBFCs:

NBFCs are permitted to avail ECBs for on-lending from any recognised lender under the ECB framework for following end-uses:

End Use	Minimum average maturity period
On-lending for working capital/ general corporate purposes	10 years
On-lending for repayment of rupee loan (availed for capital expenditure)	7 years
On-lending for repayment of rupee loan (availed for other than capital expenditure)	10 years

For rupee loans classified as non-performing asset/ SMA2 by banks (loans extended for capital expenditure in manufacturing or infrastructure sector):

- Borrowers can avail ECBs for repayment of the above rupee loans, as part of one-time settlement with lender banks.
- Lender banks can assign such loans to recognised lenders under the ECB framework.
- The above ECBs should comply with the applicable conditions under the ECB framework.

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In brief

DPIIT amended extant Consolidated FDI Policy to liberalise FDI norms in certain sectors

Department for Promotion of Industry and Internal Trade (DPIIT)

Press Note (PN) 4 of 2019 dated 18 September 2019 issued by DPIIT to liberalise FDI norms in certain sectors by notifying appropriate amendments to the Consolidated FDI Policy effective from 28 August 2017 (Extant FDI Policy).

The DPIIT issued PN 4 liberalising FDI norms in (i) Single Brand Retail Trading **(SBRT)** (ii) Contract Manufacturing (iii) Uploading / Streaming of news and current affairs through Digital Media and (iv) Coal Mining.

The most significant amendments to the Extant FDI Policy pertain to foreign investment in SBRT. These are only policy announcements issued by DPIIT and will have the force of law after amendments to the provisions of Foreign Exchange Management (Transfer and Issue of Securities to Persons Resident Outside India) Regulations, 2017.

The amendments to the Extant FDI Policy for SBRT issued in PN 4 include:

- As per the existing local sourcing norms, companies engaged in SBRT and having foreign investment in excess of 51% were required to source 30% of the value of goods purchased from India.
- In terms of the amendments in the FDI policy, all procurement made from India for the single brand are to be counted towards local sourcing irrespective of whether the goods procured are sold in India or exported.
- In addition, sourcing of goods from India for global operations can be done either by the SBRT entity or a group company or a third party under a legally tenable agreement.
- Computation of 30% local sourcing which was earlier done on an incremental year by year basis has now been amended to a 5 year period.
- SBRT entities are now allowed to conduct retail trading through e-commerce, prior to establishment of brick and mortar stores. This is subject to the condition that the SBRT entity will be required to open brick and mortar stores within 2 years from the start of online trading.

Return

In brief

RBI asks banks to cover risk sensitive areas under concurrent audit, caps term for banks' concurrent auditor at 3 years etc.

Reserve Bank of India (RBI)

Concurrent Audit System

RBI/2019-20/64 dated 18 September 2019

Concurrent audit aims at shortening the interval between a transaction and its independent examination. The RBI has revised the Concurrent Audit System in Commercial Banks - Revision of RBI's Guidelines dated 16th July 2015 based on the recommendation of Expert Committee (headed by Shri Y H Malegam). Among other matter, the summary of the revised guidelines are given below-

- **Coverage**

  The scope of work to be entrusted to concurrent auditors, coverage of business/branches, etc. is left to the discretion of the head of internal audit of banks, with the due prior approval of the Audit Committee of the Board of Directors **(ACB)** /Local Management Committee (**(LMC)** in case of foreign banks) of the bank.

- **Accountability**

  If external firms are appointed and any serious acts of omission or commission are noticed in their working, their appointments may be cancelled after giving them reasonable opportunity to be heard and the fact should be reported to ACB/ LMC of the bank, RBI and ICAI. The bank should frame a policy for fixing accountability in cases of serious acts of omission or commission noticed in the working of bank's own staff or retired staff, working as concurrent auditors.

- **Tenure**

  ACB/ LMC of the bank will decide the maximum tenure of external concurrent auditors with the bank. Tenure of external concurrent auditors with a bank should not be more than 5 years on continuous basis. The age limit for retired staff engaged as concurrent auditors is capped at 70 years. No concurrent auditor will be allowed to continue with a branch/business unit for a period of more than 3 years.

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Key Take Away

- The rationalisation on end use under the ECB framework is a welcome move from the RBI. Eligible borrowers would now have an additional avenue for foreign currency or INR. Long-term overseas borrowing can provide much-needed financial support to NBFCs (for on-lending) as well as companies having stressed loans (in capital-intensive manufacturing and infrastructure sectors).

- Local Sourcing Requirements applicable to SBRT Entities have been a significant impediment in securing foreign investment in the SBRT sector. It may be expected that the relaxation of the Local Sourcing Requirements may result in increase in foreign investment in this sector. However, it is pertinent to note that there could be additional conditionalities in the corresponding amendments to the FDI Regulations. As such, the impact of such conditionalities on the sector may need to be further evaluated.

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