FOREIGN INVESTMENT IN INDIA

July 12, 2017

AGENDA

- **Latest Trends in FDI**
- **Foreign Direct Investment**
- **Trade Credits**
- **External Commercial Borrowings**

HISTORICAL & LATEST TRENDS IN FDI

- Fastest growing Investment region for Foreign Investments
- Major source of Non-debt Finance
- Liberalisation of FDI Policy in India
- Make in India initiative : Sept 2014
- FIPB abolished for Investment proposals upto Rs 5000 Cr
- 90% of FDI under Automatic Route, Bal 10% under approval
- Single window clearance
- Three black swan events happened in 2016
  - Brexit
  - Trump Presidency
  - Demonetisation

FDI : CURRENT SCENARIO

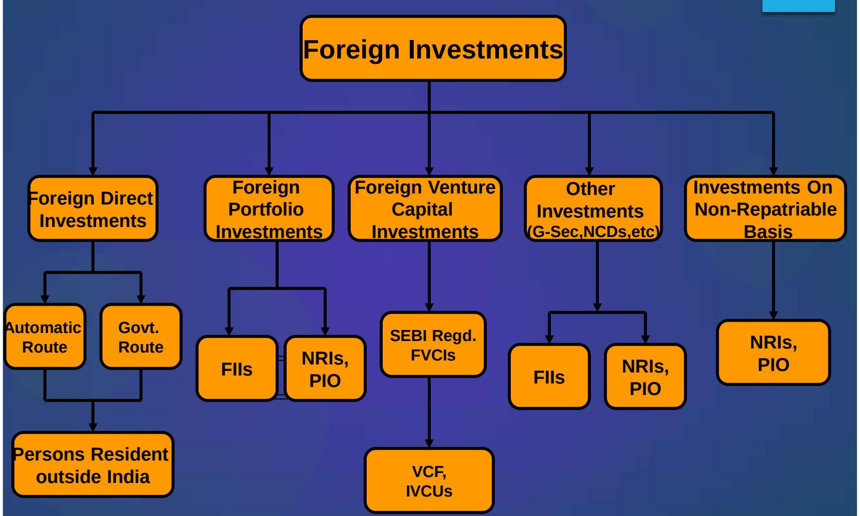
- FDI reforms & opening up of sectors
- Education, Telecom, Pharma, Agri : 100% FDI allowed
- Rail Infrastructure, Defence, Single brand retail : 100%
- Private Banks : 49% (upto 74% in Government Route)
- Investment cap in Insurance & Pension : 49% (up from 26%)
- Flow of FDI increases

FY 14 : USD 36 bn
FY 15 : USD 45 bn
FY 16 : USD 55 bn
FY 17 : USD 60 bn

FDI : MAJOR SECTOR / COUNTRY

- Technology
- Trading
- Services Sector
- Education
- Health Care
- Chemicals

- Mauritius
- Singapore
- Japan
- Netherlands
- USA



FDI : WHO CAN INVEST ?

- A non-resident entity subject to the FDI policy
- An entity incorporated in Bangladesh/Pakistan under Govt. approval route
- FII / NRI under Portfolio Investment Scheme (PIS)
- Qualified Foreign Investors (QFI)
- Foreign Venture Capital Investor (FVCI)

FDI : TYPES OF INSTRUMENTS

- Equity shares
- Fully, compulsorily & mandatorily convertible debentures
- Fully, compulsorily and mandatorily convertible preference shares
- American Depository Receipt/ Global Depository Receipt

(Subject to pricing guidelines/valuation norms prescribed under FEMA regulations)

FDI INVESTMENT CAN BE MADE INTO

- Indian companies
- Partnership firm or proprietary concern- by NRI on non-repatriation basis
- FDI in trusts: Other than VCF is not permitted
- FDI in Limited Liability Partnership Firm only through Govt route

PROCESS TO RECEIVE FDI

- KYC (6 Pointer KYC)
- MT 103
- RBI purpose code
- Credit to beneficiary account
- FIRC
- E-Biz portal
- Advance Reporting Form with timelines
- FCGPR filing
- FCTRS filing (sale or transfer of shares)

THIRD PARTY FDI

- Private equity player
- KYC (6 pointer)
- MT 103
- RBI purpose code
- FX rate closure with banks
- Credit to beneficiary's account
- FIRC
- E-Biz portal (ARF, FCGPR, FCTRS)
- Reporting to RBI

REPORTING TIMELINES UNDER FEMA

Advance Reporting Form (ARF)	Within 30 days from the date of receipt of remittance
Allotment of shares	Within 180 days from the date of receipt of remittance
Form FC-GPR	Within 30 days from the date of allotment of shares
Form FC-TRS	Within 60 days from the date of receipt of remittance
FII- PIS scheme	Form LEC (FII) daily
NRI- PIS Scheme	Form LEC (NRI) daily
ADR/ GDR	Within 30 days from the date of closing of issue

FDI : SECTOR PROHIBITION

- Atomic Energy
- Lottery Business
- Gambling & Betting
- Business of Chit Fund
- Nidhi Company
- Agricultural or Plantation activities
- Housing & Real Estate Business
- Trading in Transferable Development Rights
- Retail Trading (except single brand product retailing)

REFERENCE DOCUMENTS ON FDI

- RBI master circular 15 dt 1st July 2015 on FDI in India
- RBI master directions dt 1st Jan 2016 on FDI
- FEMA notification 20 dt May 3, 2000 (Transfer or issue of security by a person resident outside India)
- Consolidated FDI policy issued by DIPP dt 17/4/14
- RBI FAQ on Foreign Investment in India

Trade Credits

TRADE CREDITS

- Credits extended for Imports, permissible under FTP
- Overseas supplier, bank or financial institution
- Maturity upto 5 years
- Supplier’s Credit : Extended by Overseas Supplier
- Buyer’s Credit : Loans arranged by the Importer from Banks / Financial institution outside India

MATURITY & PRICING

- Import of non-capital goods : Upto 1 year
- Import of Capital goods : Upto 5 years
- No roll-over / extension permitted
- Upto USD 20 million equiv per import transaction
- All-in-cost pricing : 350 basis points over 6 months LIBOR

External Commercial Borrowings

ECB POLICY - STATUTORY & BASIS

External Commercial Borrowings (ECB) & Trade Credit availed by the residents are governed by Section 6(3)(d) of the FEMA, 1999 read with Notification No. FEMA 3/2000-RB viz. FEM (Borrowing or Lending in Foreign Exchange) Regulations, 2000, dated May 3, 2000

RBI and GOI reviews ECB policy considering:

- Macroeconomic Situations
- Market Conditions
- Sectoral Requirements
- Domestic Investments Demands
- Global Economic Situations

ECB MEANS :

ECBs are commercial loans raised by eligible resident entities from recognized non-resident entities and should conform to parameters (not standalone) :

- Minimum average maturity
- Eligible Borrowers
- Recognised Lenders
- Maximum all-in-cost ceiling
- Permitted and non-permitted end-uses

FORMS OF ECB

Under the ECB framework, permitted resident entities are allowed to borrow from recognized non-resident entities :

- Loans including bank loans
- Securitized instruments (Floating rate notes and fixed rate bonds)
- Buyers' credit
- Suppliers' credit
- Foreign Currency Convertible Bonds (FCCBs)
- Financial Lease; and
- Foreign Currency Exchangeable Bonds (FCEBs)(Approval Route)

ECB's CAN BE RAISED

- Automatic route : cases examined by Authorised Dealer along with Form 83

- Approval route : Requests sent to RBI, Mumbai post examination by Authorised Dealer

MINIMUM AVERAGE MATURITY

- Track I : Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years upto / beyond USD 50 million resp
- Track II : Long term foreign currency denominated ECB with minimum average maturity of 10 years.
- Track III : Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years.

ELIGIBLE BORROWERS

- Corporates
- Corporates in the services sector viz. hotels, hospitals & software sector
- Units in SEZs
- SIDBI
- EXIM Bank (under approval route)
- Companies in Infrastructure sector, NBFC – IFCs & AFCs
- Real Estate Investment Trusts (REITs)
- Infrastructure Investment Trusts (INVITs)

RECOGNISED LENDERS / INVESTORS

- International Banks
- Multilateral Financial Institutions (IFC, ADB)
- Suppliers of Equipment
- Foreign Equity holders
- Foreign collaborators
- Overseas long term investors (Pension Funds, Insurance companies)
- Overseas branches / subsidiaries of Indian Banks

ALL-IN-COST PRICING

- ECB with minimum average of 3 to 5 years : 300 basis points pa over 6 month LIBOR
- ECB more than 5 years : 450 basis points pa over 6 month LIBOR
- ECB for 10 years : 500 basis points pa over 6 month LIBOR

END-USE

- Import of Capital Goods
- New Projects
- Modernisation / Expansion
- General Corporate purposes (including working capital) in Manufacturing, Infrastructure, hotels, hospitals and software sector

- ECB from direct foreign equity holder (Min 25%)
- Min average maturity of 7 years
- No prepayment allowed before maturity

END-USES NOT PERMITTED

- Real estate activities other than development of integrated townships / affordable housing projects
- Investing in capital markets
- On-lending to other entities
- Acquisition of Land
- Activities prohibited as per FDI guidelines from time to time

INDIVIDUAL LIMITS UNDER AUTOMATIC ROUTE

- Corporates in the services sector (hotels, hospitals, software development sector, misc service) : Upto 200 mn or equiv
- Corporates not included above : Upto USD 750 mn or equiv
- For entities engaged in micro- finance activities : Upto USD 100 mn or equiv
- Other entities like SIDBI : Upto USD 500 mn or equiv

HEDGING REQUIREMENTS

- Borrowers eligible in terms of paragraph 2.4.2.vi of RBI Master direction as
  a. Shall have a board approved risk management policy
  b. Shall keep their ECB exposure hedged 100 per cent at all times
  c. Designated AD Category-I bank shall verify that 100% hedging is complied with during the currency of ECB & report the position to RBI through ECB 2 returns
- Wherever hedging has been mandated by the RBI, the ECB borrower will be required to cover principal as well as coupon through financial hedges

ECB LIABILITY: EQUITY RATIO

- ECB raised from direct equity holder under the automatic route, the ECB liability of the borrower towards the foreign equity holder < 4 : 1
- ECB raised under the approval route, this ratio should not be more than 7:1
- This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent

PERMITTED SECURITIES FOR ECB FACILITY

- Immovable assets of Indian borrower
- Pledge of shares of Indian borrower or domestic associate companies & other financial securities
- Corporate guarantee / Personal guarantee
  - A copy of Board Resolution for the issue of corporate guarantee should be submitted
  - Specific requests from individuals to issue personal guarantee indicating details of the ECB should be submitted
- Movable assets
- Bank Guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks/ FIs not allowed

OTHER SALIENT FEATURES

- Currency of Borrowing

ECB can be raised in any freely convertible currency as well as in INR

- Parking of ECB Proceeds

ECB proceeds are permitted to be parked abroad as well as domestically

- Conversion of ECB into equity

Conversion of ECBs, including those which are matured but unpaid, into equity is permitted subject to the applicable guidelines

ECB- REPORTING REQUIREMENTS

Form 83

- For allotment of Loan Registration Number (LRN) borrowers has to submit Form 83, in duplicate, to AD Bank Within 7 days of Loan Agreement
- One Copy to RBI, (DSIM), BKC, Mumbai
- Draw-down & levy of charges only after allotment of LRN

Form ECB-2

- Monthly Submission to RBI(DSIM), Mumbai
- Within 7 working days from close of the month
- Certified by AD Bank
- File even if no transaction

REFINANCING OF EXISTING ECB

- The existing ECB can be refinanced by a fresh ECB subject to conditions:
  - Raised at a lower all-in-cost
  - The residual/outstanding maturity of the original ECB is not reduced (i.e. either maintained or elongated)
  - Fresh ECB should not be raised from overseas branches/subsidiaries of Indian banks
- The existing ECB can be refinanced by a fresh Rupee term loan subject to compliance with RBI circular dated April 6, 2015

DELEGATION OF POWERS TO AD

- Changes/modifications in the drawdown / repayment schedule
- Changes in the currency of borrowing
  - Freely convertible currency
  - Change of currency of INR denominated ECB is not permitted.
- Change of the AD bank
  - Obtain NOC from the existing designated AD bank
- Changes in the name of the Borrower Company (ROC certificate)
- Transfer of ECB
  - on account of re-organisation at the borrower's level in the form of merger/demerger/amalgamation/acquisition duly as per the applicable laws/rules
  - company acquiring the ECB is an eligible borrower

Contd..

- Change in the recognized lender
  - the original lender as well as the new lender are recognized lender as per extant ECB guidelines
  - There is no change in the other terms & conditions of the ECB
- Change in name of the lender (ROC Certificate)
- Prepayment of ECB may be allowed by AD Category I banks subject to compliance with the stipulated minimum average maturity and All-in-cost ceiling
- Cancellation of LRN
  - no draw down for the said LRN has taken place and
  - monthly ECB-2 returns till date in respect of the LRN have been submitted to RBI

Contd..

- Change in the end-use of ECB proceeds
  - proposed end-use is permissible under the automatic route
  - change in the end-use of ECBs availed under the approval route will continue to be referred to RBI
- Reduction in amount of ECB may be allowed ensuring compliance with the applicable ECB guidelines.
- Change in all-in-cost of ECB may be allowed subject to the applicable ECB norms for automatic route.
- Extension of matured but unpaid ECB
  - Consent of lender
  - No additional cost to be incurred

ECB : AUTOMATIC ROUTE FOR STARTUPS

- Eligibility: An entity recognised as a Startup by the Central Government as on date of raising ECB will be eligible under the facility
- Maturity: Minimum average maturity period will be 3 years
- Recognised lender: Lender / investor shall be a resident of a country who is either a member of Financial Action Task Force (FATF) or a member of a FATF-Style Regional Bodies
- Forms: The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares
- Currency: The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof

ECB FACILITY FOR STARTUPS

- Amount: The borrowing per Startup will be limited to USD 3 million or equivalent per financial year
- All-in-cost: Shall be mutually agreed between the borrower and the lender
- End uses: For any expenditure in connection with the business of the borrower
- Conversion into equity: Conversion of ECB into equity is freely permitted subject to Regulations applicable for foreign investment in Startups
- Hedging: Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk

REFERENCE DOCUMENTS ON ECB

- RBI Master Circular on ECB & Trade Credits
- FEMA Notification 3 (Borrowings and Lendings in foreign exchange)
- RBI AP (DIR Series) Circulars
- RBI AD Conference FAQ's
- Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993

Thank you

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