

# Author's Note

- ✦ Amendments in this pdf are applicable for **May 2020**.
- ✦ If you do not have much time to study whole RTP then I recommend to use these amendment notes.
- ✦ It is highly recommended to practice the questions given in **RTP of May 2019, Nov. 2019 & May 2020**.
- ✦ If you want to **score exemption** in Economic Laws then I recommend to make optimum use of my 35 Hours Lectures and do not forgot to write High Quality Tests organised by **Apnamentor**.
- ✦ I have tried my best to make it concise and error free. However, if you find any error then do mail me at [sanidhyasaraf@gmail.com](mailto:sanidhyasaraf@gmail.com).
- ✦ For getting regular updates and more pdfs you all can be part of my [Apnamentor](#) family on telegram by clicking on below links of my channels.
- ✦ **Click Here to Join My Telegram Channel**
- ✦ **Click Here to Join Apnamentor Telegram Channel**

– **CA SANIDHYA SARAF**

(You can also click on my name to join my [telegram channel](#) directly)

**For getting Free Resources or Buying Lectures or Books you can simply visit**

[www.apnamentor.com](http://www.apnamentor.com)



**CA SANIDHYA SARAF**

**YOUR FRIEND, MENTOR & COACH**



**Our Results**

**Nov 2019**

**19 All India Rankers**

**250+ Exemptions**

**74% Pass Percentage**

**1000+ Successful Aspirants**

**70+ Marks**  
Acheived by 10 students

**Apnamentor.com**

97604-00350



**Audit Saga**

**(CA Sanidhya Saraf Classes)**

69019-55055/56

**FOR TEST SERIES, PENDRIVE CLASSES & FREE RESOURCES VISIT:-**

**WWW.APNAMENTOR.COM**

**Amendments in paper 6D Corporate and Economics Laws for May 2020 and Nov 2020 Examinations.**

**↓ Chapters ↓**

- 1 PROHIBITION OF BENAMI PROPERTY TRANSACTIONS, 1988**
- 2 PREVENTION OF MONEY LAUNDERING ACT**
- 3 Foreign Exchange Management Act, 1999**
- 4 INSOLVENCY AND BANKRUPTCY CODE 2016**



**JOIN US**

For The Best Test Series, Pendrive Classes and Free Resources

## 1

# PROHIBITION OF BENAMI PROPERTY TRANSACTIONS, 1988

## Section-24

Earlier it was given in sub-section 3 that the Initiating officer may provisionally attach the benami property for a period not exceeding 90 days from the **date of issue of notice**.

Now as per the amended provisions for the words, brackets and figure "from the date of issue of notice under sub-section (1)", the words, brackets and figure "from the **last day of the month in which the notice under sub-section (1) is issued**" shall be substituted.

So now the Initiating officer may provisionally attach the benami property for a period not exceeding 90 days from the **last day of the month in which the notice under sub-section (1) is issued**.

## Section-46

### Insertion of sub-section (1A) after sub-section 1

Any person aggrieved by an order passed by the authority under section 54A may prefer an appeal in such form along with such fees, as may be prescribed, to the Appellate Tribunal against the said order within a period of forty-five days from the date of that order.

## Section-47

Appellate Tribunal or any authority may, in order to rectify any mistake apparent on the face of the record, amend any order passed by it under the provisions of this Act, within a period of one year from the end of the month in which such order was passed. {Earlier the words Appellate Tribunal or Adjudicating Authority was used}.

## Section-54 A

**1** Any person who fails to-

- i** comply with summons issued under sub-section (1) of section 19; or
- ii** furnish information as required under section 21

shall be liable to pay penalty of twenty-five thousand rupees for each such failure

**2** The penalty under sub-section (1) shall be imposed by the authority who had issued the summons or called for the information.

- 3** No order under sub-section (2) shall be passed by the authority unless the person on whom the penalty is to be imposed has been given an opportunity of being heard: Provided that no penalty shall be imposed if, such person proves that there were good and sufficient reasons which prevented him from complying with the summons or furnishing information.

### Section-55

- 1** For the word "Board", the words "competent authority" shall be substituted.
- 2** "competent authority" means a Commissioner, a Director, a Principal Commissioner of Income-tax or a Principal Director of Income-tax as defined in clause (16), clause (21), clause (34B) and clause (34C), respectively, of section 2 of the Income-tax Act, 1961.
- 3** The implication of this change is that Now prosecution shall be initiated against any person in respect of any offence under Sections 3, 53 or Section 54 with the sanction of competent authority. Now sanction of CBDT is not required.

### Section-30

For the words "the Adjudicating Authority", the words "any authority" shall be substituted.

i.e. Now the amended provision says

The CG shall, by notification establish an Appellate Tribunal to hear appeals against the orders of any Authority under this Act.

### Section-54

The entries in the records or other documents in the custody of an authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under section 3 or this Chapter, as the case may be, and all such entries may be proved either by—

- i** The production of the records or other documents in the custody of the authority containing such entries; or
- ii** The production of a copy of the entries certified by the authority having custody of the records or other documents under its signature stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody.

# 2

## PREVENTION OF MONEY LAUNDERING ACT

### Amendment in section 8 vide Finance Act, 2019, w.e.f. 20-3-2019

Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under section 5(1) or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

- a continue during investigation for a period not **exceeding three hundred and sixty- five days**{ **Earlier it was 90 days**} or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and
- b become final after an order of confiscation is passed

### Explanation

For the purposes of computing the period of three hundred and sixty- five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

### Insertion of section 11A vide the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019

Every reporting entity shall verify the identity of its clients and the beneficial owner, by

- a authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 **if the reporting entity is a banking company**; or
- b offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016
- b use of passport issued under section 4 of the Passports Act, 1967
- b use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf

The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

If, for identification of a client or beneficial owner, authentication or offline verification is used, neither his core biometric information nor his Aadhaar number shall be stored.

**Omission of Section 12 vide Aadhaar and Other Laws {Amendment} Act, 2019 w.e.f. 25-7-2019**

Clause ( c ) and ( d ) of Section 12 (1) have have omitted because of Insertion 11 A

**?** **Probable Questions** **?**

- Can Bank's deny to open saving account of customers if they fail to furnish Aadhar Card?
- How shall reporting entities verify the identity of clients and beneficial owners?
- MCQ Questions can be framed.



## 3

# Foreign Exchange Management Act, 1999

## Addition/Changes in FEMA

- Section 6
- Overseas Direct Investment { Study Material }
- External Commercial Borrowings { RTP May 2020 }
- Import of Goods and Services { Study Material }
- Borrowing and Lending in Foreign currency by persons other than authorized dealer

Section 6 of the Foreign Exchange Management Act, 1999 vide Finance Act, 2015 w.e.f. 15.10.2019.

Amended section with the changes marked in bold, is as follows:-

- 1** Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.
- 2** The Reserve Bank may, in consultation with the Central Government, specify-
  - a** any class or classes of capital account transactions, involving debt instruments, which are permissible
  - b** the limit up to which foreign exchange shall be admissible for such transactions.
  - c** any conditions which may be placed on such transactions.

[Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

- 2A** The Central Government may, in consultation with the Reserve Bank, prescribe—
  - a** any class or classes of capital account transactions, not involving debt instruments, which are permissible.
  - b** the limit up to which foreign exchange shall be admissible for such transactions; and
  - c** any conditions which may be placed on such transactions.



For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

In a nutshell, RBI has the power to specify class of transactions involving debt instruments as Capital Account Transactions and CG has power to specify class of transactions as Capital Account Transactions, not involving debt instruments. {Earlier such classification was not there. RBI exercise the power to specify class of transactions as capital account transactions for both debt and non-debt instruments}.

**Section 6 (3) has now been omitted.**

## Overseas Direct Investment (ODI)

### Relevant Definitions:

"Direct investment outside India" means investments, either under the **Automatic Route** or the **Approval Route**, by way of:

- a** Contribution to the capital or subscription to the Memorandum of a foreign entity, or
- b** purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (JV or WOS)

However, it does not include Portfolio investment

### 'Joint Venture'

means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian Party makes a direct investment.

### "Wholly Owned Subsidiary (WOS)"

means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian Party.

### "Indian Party"

means a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, or a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008, making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank.

### NOTE

In the definition of Indian Party, resident individual is not covered. Resident individual will be separately covered later on.

### "Host Country"

means the country in which the foreign entity receiving the direct investment from an Indian Party is registered or incorporated.

### "Financial Commitment"

means the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.

### Please Note

An Indian Party can make overseas direct investment in any bonafide activity. Real Estate and Banking business are prohibited sectors for overseas direct investment.

A resident individual may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India. However, the limit of overseas direct investment by the resident individual is prescribed by RBI under the Liberalized Remittance Scheme.



### Mode of direct investment outside India

a

#### Automatic route for direct investment or financial commitment outside India

Under the Automatic route, an Indian Party does not require any prior approval from the Reserve Bank for making overseas direct investment in a JV/WOS abroad. He should approach an Authorized Dealer Category -1 bank with prescribed application and documents.

All the transactions relating to investment in a JV/WOS must be routed through one branch of the authorized dealer to be designated by the Indian Party.

The total financial commitment (FC) of Indian Party in overseas JV/WOS shall not exceed 400 % of its networth { as per the last audited Balance Sheet }. { Currently 400 % has been revised to 100 percent by RBI but not yet notified by ICAI. Please check the RTP before your attempt to confirm whether there are changes applicable for your exams }.

Net worth here means aggregate of paid up capital and free reserves.

FC made out of balances held in EEFC account of the Indian Party or out of the funds raised through ADR's/GDR's will not be taken into consideration for the purpose of the aforesaid calculation.

However, if the financial commitment exceeds USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit given under the automatic route.

Overseas JV/WOS shall carry out bonafide activity permitted as per the laws of the host country.

Indian Party shall not be on the Reserve Bank's exporter's caution list/list of defaulters/under investigation by the Director of Enforcement or any investigative agency or regulatory authority.

ODI in Pakistan is allowed under the approval route only. ODI in Nepal can be only in Indian Rupees. ODI in Bhutan is allowed only in Indian Rupees and in freely convertible currencies.

In a nutshell, The total financial commitment of the Indian Party in JV/WOS in any country is upto USD 1 (one) billion { or 100 million } (or its equivalent) in any one financial year or 400 % of networth whichever is lower and investment is a lawful activity permitted by a host country.

b

### Approval Route

Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad.

Reserve Bank would, inter alia, take into account the following factors while considering such applications.

- Prima facie viability of the JV / WOS outside India.
- Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment)
- Financial position and business track record of the Indian Party and the foreign entity; and
- Expertise and experience of the Indian Party in the same or related line of activity as of the JV / WOS outside India

## Prohibitions on direct investment in abroad by an Indian party

- 1** Indian Parties are prohibited from making investment (or financial commitment) in foreign entity engaged in real estate (meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges) or banking business, without the prior approval of the ReserveBank.
- 2** An overseas entity, having direct or indirect equity participation by an Indian Party, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the ReserveBank.

## Meaning of Financial Commitment {Understanding with help of a case study}

The total financial commitment of the Indian Party in all the Joint Ventures/Wholly Owned Subsidiaries shall comprise of the following:-

- a** 100% of the amount of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS);
- b** 100% of the amount of other preference shares
- c** 100% of the amount of loan
- d** 100% of the amount of guarantee (other than performance guarantee) issued by the Indian Party
- e** 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian Party provided the bank guarantee is backed by a counter guarantee / collateral by the IndianParty
- f** 50% of the amount of performance guarantee issued by the Indian Party.

### CASE STUDY 1:

- An Indian Company{I Ltd) formed a WOS in USA {U Ltd, an Limited Liability Company}.
- I Co remitted sum as under to U Co on various dates:-
  - Subscription to Equity Shares-USD 100
  - Subscription to Redeemable Preference Shares-USD 250
  - Extended Corporate Guarantee on behalf of U Co with Midtown Mutual Bank to the extent of USD 50 (value of loan extended by the Bank to U Co)
  - Performance Guarantee on behalf of U Co-USD 50

## Question

What is the Financial Commitment of I Co?

## Answer

Financial Commitment of I Co is USD 100(Equity) + USD 250( Preference Shares) + USD 50 {Corporate Guarantee} + USD 25 { Performance Guarantee}=USD 425.

### CASE STUDY 2:

**1** Can an Indian Party issue performance guarantee in favour of overseas JV/WOS?

Yes, the Indian Party is permitted to issue performance guarantee and 50 % of the amount of the performance guarantees will be reckoned for the purpose of computing financial commitment.

**2** Can an Indian Party extend guarantee to an overseas entity without any equity participation in that entity?

No, Indian Party can extend Loan and guarantee to an overseas entity only if there is already an existing equity participation by way of direct investment.

**3** Can an Indian Party make foreign direct investment in real estate?

Real Estate sector and Banking are the prohibited sectors for overseas investment. { Real estate business means buying and selling of real estate or trading in transferable development rights but does not include development of township, construction of residential/commercial premises, roads and bridges.

**4** Can ECB raised be utilized for ODI?

Yes, ECB raised can be utilized for ODI.

### Overseas Direct Investments by resident individuals

Resident individuals may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India.

The limit of overseas direct investment by the resident individual shall be within the overall limit prescribed by the Reserve Bank of India under the provisions of Liberalised Remittance Scheme {LRS}, as prescribed by the Reserve Bank from time to time. { i.e. USD 2,50,000 per Financial year }

Investment from EEFC and RFC Account shall also be included in the limit of USD 2,50,000 under the provisions of LRS.

## External Commercial Borrowing

- New Guidelines w.r.t ECB were introduced in the Revised Study Material for May 2020 and Nov 2020.
- However, within 2 months of issue of new edition, the guidelines have been again Amended in RTP for May 2020.
- The guidelines for ECB has been given in a very detailed manner in RTP. However, a few guidelines have been simplified in this amendment sheet and a few has been omitted from this Amendment Sheet and the amendment sheet has been strictly made from Exam point of view. Student can refer May 2020 RTP for more details.
- It has been decided, in consultation with the Government of India, to rationalise the framework for ECB and Rupee Denominated Bonds in light of the experience gained to improve the ease of doing business.

### Meaning of ECB's

ECB's are commercial loans raised by eligible resident entities from recognized non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

The term 'All-in-Cost' includes rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or Indian Rupees (INR) but will not include commitment fees, pre- payment fees / charges, withholding tax payable in INR.

### Salient features of the New Guidelines

- Merging of Track 1 and II as "Foreign Currency Denominated ECB" and merging of Track III and Rupee Denominated Bonds framework as "Rupee Denominated ECB"
- List of Eligible borrowers has been expanded to include all entities eligible to receive FDI. Additionally, Port Trust, Units in SEZ, SIDBI, EXIM Bank, registered entities engaged in micro-finance activities and non-government organizations can also borrow under this framework.
- The lender shall be resident of FATF {Financial Action Task Force} or IOSCO {The International Organization of Securities Commissions} compliant country. Multilateral and Regional Financial Institutions, Individuals and Foreign branches/subsidiaries of Indian banks can also be lenders.
- Minimum Average Maturity Period will be 3 years for all ECB's. However, in special cases it may be different.

## Framework on Raising Loans through ECB's

The framework for raising loan through ECB comprises of the following 2 options:-

- 1 FCY denominated ECB {Foreign currency risk is involved}
- 2 INR denominated ECB {Foreign currency risk is not involved}

## Eligible Borrowers

All entities eligible to receive FDI are eligible to raise funds via ECB. Further, the following entities are also eligible to raise ECB:

- Port Trusts
- Units in SEZ
- SIDBI
- EXIM Bank

○ Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations (permitted only to raise INR ECB).

↓ **Minimum Average Maturity Period.**

↑ **Minimum Average maturity period will be 3 years.**

Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity.

Category	MAMP
ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year	1 Year
ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 Year
ECB raised for working capital purposes or general corporate purposes & on-lending by NBFCs for working capital purposes or general corporate purposes.	10 Year
ECB raised for repayment of Rupee loans availed domestically for capital expenditure & on-lending by NBFCs for the same purpose	7 Year
ECB raised for repayment of Rupee loans availed domestically for purposes other than capital expenditure & on-lending by NBFCs for the same purpose	10 Year



## Available routes for raising ECB

### a Automatic Route

- No approval of RBI is needed to raise funds via ECB upto USD 750 million or equivalent per Financial Year.
- The application to raise funds under Automatic Route shall be examined by Authorized Dealer Category -I Bank.
- The designated AD Category 1 bank while considering the ECB proposal is expected to ensure compliance with applicable ECB guidelines.
- ECB liability -equity ratio for ECB raised under the Automatic Route cannot exceed 7: 1

- b** Approval Route-To raise funds , above exceeding the limits given in automatic route, borrowers shall approach RBI to seek its approval. RBI shall submit the proposal before the Empowered Committee set by RBI . The RBI shall take a final decision based on the recommendation of Empowered Committee.

### NOTE

Authorized Dealer category 1 banks are basically authorized money changers approved by RBI under section 10 of FEMA,1999.Examples-SBI,Canara Bank, Axis Bank.

## Negative List w.r.t ECB

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- Real estate activities
- Investment in capital market
- Equity investment
- Working capital purposes
- General corporate purposes
- Repayment of Rupee loans

### NOTE

However if the ECB was raised specifically for Working Capital Purposes/General corporate Purposes/Repayment of Rupee Loans, the proceeds realized can be utilized for the same

## Hedging Provisions w.r.t. ECB

- The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure.
- Infrastructure space companies shall have a Board approved Risk management policy.

Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure **{principal as well as the coupon}** in case the average maturity of the ECB is less than 5 years.

Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India.

### Change of currency of borrowing

Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.

Change of currency from INR to any freely convertible foreign currency is not permitted.

### Loan Registration Number

**1** Funds can be raised via ECB Route only after obtaining the Loan Registration Number from the Reserve Bank.

**2** To obtain the Loan Registration Number, borrowers are likely to submit duly certified FORM ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category 1 Bank.

**3** AD Category 1 bank will forward one copy to the concerned department in RBI.

### Monthly Reporting of Actual Transactions

The borrowers are required to report actual ECB transactions through FORM ECB 2 Return through the AD Category 1 bank on monthly basis so as to reach DSIM {Department of Statistics and Information Management} within seven working days from the close of month to which it relates.

Changes, if any, in ECB parameters should also be incorporated in FORM ECB 2 Return.

### Late submission fee for delay in reporting

S.L. NO	Type of return/form	Period of delay	Applicable LSF
1	Form ECB 2	Upto 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Upto 3 years from due date of submission	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond 3 years from due date of submission	INR 1,00,000 per year

## Standard operating procedure (SOP) for untraceable entities

The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

## Definition of untraceable entities

Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:-

**a**

Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;

**b**

Entities have not submitted Statutory Auditor's Certificate for last two years or more;

## Action

The followings actions are to be undertaken in respect of 'untraceable entities';

**a**

File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;

**b**

No fresh ECB application by the entity should be examined/processed by the AD bank.

**c**

Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and

**d**

No inward remittance or debt servicing will be permitted under auto route

## Conversion of ECB into equity

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:-

**a**

The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received.

- The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy.
- Applicable pricing guidelines for shares are complied with
- If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with

### Security for raising ECB

AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:-

- the underlying ECB is in compliance with the extant ECB guidelines.
- there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and
- No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

### ECB Facility for Startups

#### Framework

AD Category 1-banks are permitted to allow Startups to raise ECB under the automatic route.

#### Eligibility

An entity recognised as a Startup by the Central Government as on the date of raising ECB.

#### Recognized lender

Lender/Investor shall be resident of FATF compliant country.

#### Forms

The borrowing can be in form of loans or non-convertible , optionally convertible or partially convertible preference shares.

#### Maturity

Minimum Average maturity period will be 3 years.

### Currency

The borrowing should be denominated in any freely convertible currency or in Indian Rupees or a combination thereof.

### Amount

The borrowing per Start-up will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

### End Uses

For any expenditure in connection with business of the borrower.

### Security

The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities etc. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFC's is not permitted.

### ECB facility with Oil Marketing Companies

- Public sector Oil Marketing Companies can raise ECB's for working capital purposes with minimum average maturity period of 3 years from all recognized lenders under the Automatic Route without mandatory hedging and individual limit requirements.
- The overall ceiling for such ECB's shall be USD 10 billion or equivalent.

### ECB by entities under restructuring/ECB facility for refinancing stressed assets:

- An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.
- Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route.
- Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders.
- The applicable MAMP will have to be strictly complied with under all circumstances.

## Contravention of ECB Guidelines and Transparency Requirement

- For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.
- The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA.

## Import of Goods and Services

### Import

The term 'Import' means bringing into India any goods or services.

### Governing Regulation

Section 5 of FEMA Act 1999, read with Foreign Exchange Management (Current Account Transaction) Rules, 2000.

### Guidelines to be remembered

- 1** The Authorised Dealer {AD} shall adhere to "Know Your Customer" (KYC) guidelines issued by RBI while undertaking import transactions.
- 2** AD may allow remittance for making payments for imports into India, after ensuring that all the requisite details are made available by the importer and the remittance is for bonafide trade transactions as per applicable laws in force.
- 3** AD should ensure that the importer furnishes evidence of import viz., as in IDPMS, Postal Appraisal Form or Customs Assessment Certificate, etc., and satisfy himself that goods equivalent to the value of remittance have been imported. AD should ensure that all import remittances outstanding on the notified date of IDPMS are uploaded in IDPMS (Import Data Processing and Monitoring System)
- 4** A person resident in India may make payment for import of goods in foreign exchange through an international card held by him/in rupees from international credit card/ debit card through the credit/debit card servicing bank in India against the charge slip signed by the importer, or as prescribed by Reserve Bank from time to time



**5** Any person resident in India may also make payment **In rupees** towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India who is on a visit to India; **by means of a crossed cheque or a draft** as consideration for purchase of gold or silver in any form imported by such person

**6** A company or resident in India may make payment in rupees to its non-whole time director who is resident outside India and is on a visit to India for the company's work and is entitled to payment of sitting fees or commission or remuneration, and travel expenses to and from and within India . However such payment shall be in accordance with Memorandum of Association or Articles of Association or any agreement entered into by it or any resolution passed in General Meeting or by BOD.

**7** Time Limit for Settlement of Import Payments:-

- a** remittances against imports should be completed not later than **six months from the date of shipment**, except in cases where amounts are withheld towards guarantee of performance, etc.
- b** Deferred payment arrangements (including suppliers' and buyers' credit) up to five years, are treated as trade credits.

**8** Extension of Time for settlement of Import Payments

- a** AD can consider granting **extension of time for settlement of import dues up to a period of six months at a time (maximum up to the period of three years)** irrespective of the invoice value for delays on account of disputes about quantity or quality or non-fulfilment of terms of contract; financial difficulties and cases where importer has filed suit against the seller.
- b** However, Extension cannot be granted by the AD, if the import transactions are under investigation by Directorate of Enforcement / Central Bureau of Investigation or other investigating agencies.
- c** While considering extension beyond one year from the date of remittance, the total outstanding of the importer does not exceed USD one million or 10 percent of the average import remittances during the preceding two financial years, whichever is lower.

**9** Import for Foreign Exchange into India

- a** A person may **send into India** , without limit , foreign exchange in any form (other than currency notes, bank notes and travellers cheques).



- b** A person may **bring into India** from any place outside India, without limit, foreign exchange (other than unissued notes). However, on arrival in India, a declaration must be given to custom authorities about the same. However, declaration is not needed if aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in by such person at any one time does not exceed USD 10,000 and/or the aggregate value of foreign currency notes (cash portion) alone brought in by such person at any one time does not exceed USD 5,000.

## 10 Import of Indian Currency and Currency Notes

- a** Any person resident in India who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (**other than from Nepal and Bhutan**), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000 (Rupees twenty five thousand only)
- b** A person may bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India for any amount in denominations upto Rs.100/- {The reason for the same is that post demonetization Nepal Government has banned the notes of Rs 200, 500 and 2000}.

## 11 Issue of Guarantees by an Authorised Dealer in favour of importer

- a** An authorized dealer is permitted to provide a guarantee in respect of any debt, obligation or other liability incurred by a PRI as an importer, in respect of imports undertaken on deferred payment terms in accordance with approval of RBI.
- b** It is also clarified that AD may give a guarantee , Letter of Undertaking or Letter of Comfort in respect of any debt, obligation or other liability incurred by a person resident in India and owned to a overseas supplier of goods, banks, or financial institution in respect of permitted import of goods.
- c** AD, may subject to the directions of RBI also permit a person resident in India to issue corporate guarantee in favour of an overseas lessor for financing import.
- d** An AD may also give guarantee in favour of a service importer upto USD 1,00,000 if such service importer is a PSU or a department/undertaking of Government of India /State Government and upto USD 5,00,000 if such service importer is other than PSU or a department/undertaking of Government of India /State Government.

## Borrowing and Lending in Foreign currency by persons other than authorized dealer

Borrowing in foreign currency by persons other than an authorised dealer: The circumstances and the conditions regarding borrowing in foreign currency by persons other than an authorised dealer are mentioned below:

**i** For execution of projects outside India and for exports on deferred payment terms: A person resident in India may borrow, whether by way of loan or overdraft or any other credit facility, from a bank situated outside India, for execution outside India of a turnkey project or civil construction contract or in connection with exports on deferred payment terms, provided the terms and conditions stipulated by the authority which has granted the approval to the project or contract or export is in accordance with the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000.

**ii** For imports: An importer in India may, for import of goods into India, avail of foreign currency credit for a period not exceeding six months extended by the overseas supplier of goods, provided the import is in compliance with the Export Import Policy of the Government of India in force.

**iii** Borrowing by resident individual: An individual resident in India may borrow a sum not exceeding US\$ 250,000/- or its equivalent from his close relative outside India, subject to the conditions that:-

**a** the minimum maturity period of the loan is one year.

**b** the loan is free of interest; and

**c** the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account to the non-resident lender.

Lending in foreign currency by persons other than an authorised dealer: The circumstances and the conditions regarding lending in foreign currency by persons other than an authorised dealer are mentioned below:-

**i** Lending to WOS / JV: An Indian entity may lend to its wholly owned subsidiary or joint venture abroad constituted in accordance with the provisions of Foreign Exchange Management (Transfer or issue of foreign security) Regulations, 2000.

**ii** Lending by Select Institutions: Export Import Bank of India, Industrial Development Bank of India, Industrial Finance Corporation of India, Industrial Credit and Investment Corporation of India Limited, Small Industries Development Bank of India Limited or any other institution in India may extend loans to their constituents in India out of the foreign currency borrowings raised by these institutions with the approval of the Central Government for the purpose of onward lending.



Lending by Indian companies to their employees: Indian companies in India may grant loans to the employees of their branches outside India for personal purposes provided that the loan shall be granted for personal purposes in accordance with the lender's Staff Welfare Scheme/Loan Rules and other terms and conditions as applicable to its staff resident in India and abroad.



## Probable Questions



- Time limit for settlement of import payments and extension of the same.
- What are the routes available for raising ECB's?
- Can ECB raised be utilized for real estate activities?
- Short Note on ECB facility for start up's
- Who are the eligible borrowers to raise funds via ECB route?
- Can ECB raised be utilized for ODI?
- What is the total financial commitment that a Indian Party can make in its overseas JV/WOS?
- Modes of Direct Investment outside India?
- Which authority can prescribe capital account transaction's for Non-debt instruments?



# 4

## INSOLVENCY AND BANKRUPTCY CODE 2016

### Clarification on Resolution Plan

Resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;”{ Just a clarification issued via Explanation to Section 5(26).

### Time limit for completion of corporate insolvency resolution process

The **corporate insolvency resolution process** shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

The insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019”.

### Can AA admit application if it has not ascertained existence of default?

If the Adjudicating Authority has not ascertained the existence of default{as required under Section 7} and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

### Voting Right of Authorised Representative

The authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent, of the voting share of the financial creditors he represents, who have cast their vote.{ **Section 25 A**}

### Contents of Resolution Plan

The Resolution Plan shall now provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

- i the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
- ii the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (7) of section 53 in the event of a liquidation of the corporate debtor.

### Powers of Committee of Creditors Now Enhanced

Committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (7) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.



### Probable Questions



- What is the time limit for completion of Insolvency Resolution Process?
- Can Adjudicating Authority admit application if it has not ascertained existence of default?
- The resolution plan made provides that operational creditors shall be paid 50 % of dues. Comment on the validity of resolution plan.