

Foreign Exchange Management Act, 1999

1.1 Import of Goods and Services

Import of Goods and Services into India is being allowed in terms of Section 5 of FEMA 1999, read with FEM(Current Account Transaction) Rules, 2000.

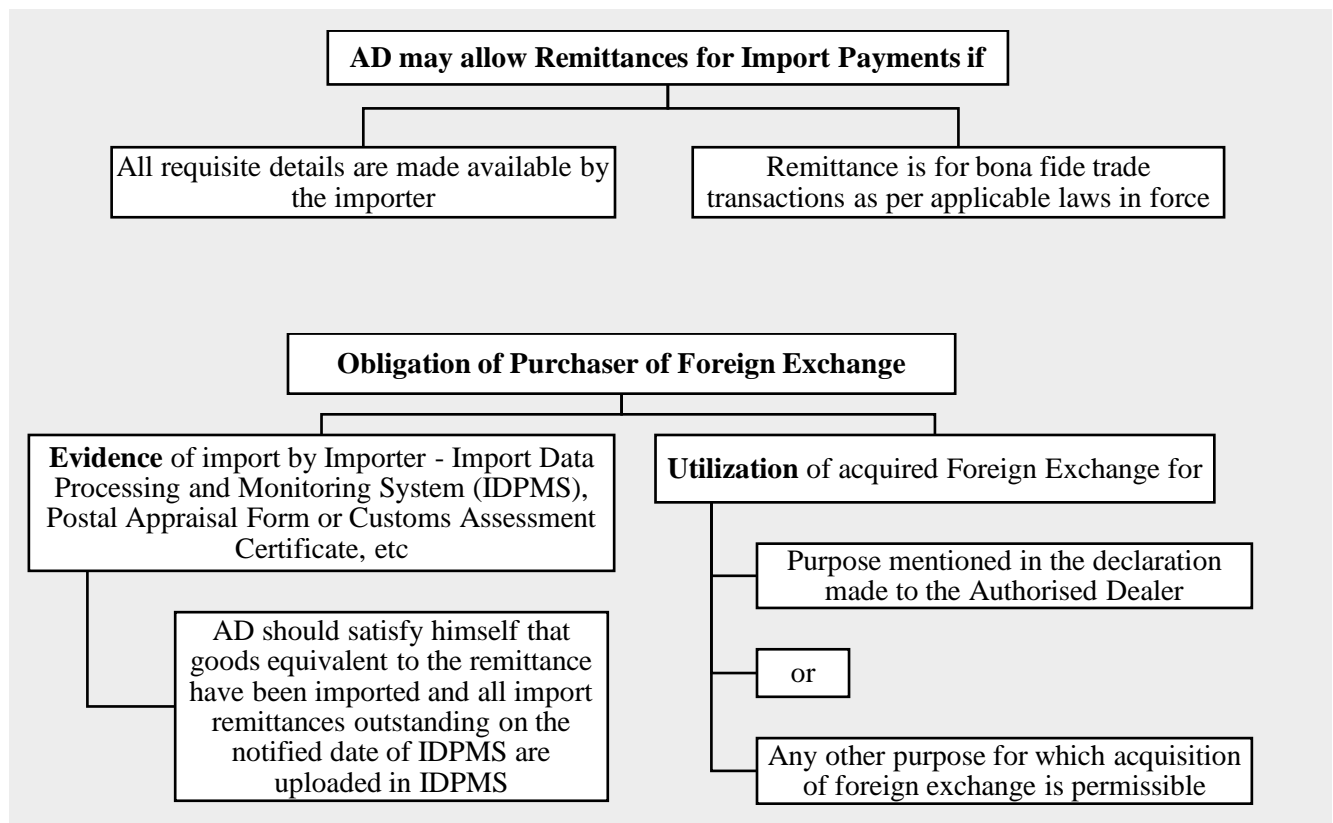
As per the section I of the Master Direction 17, import trade is regulated by the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce & Industry, Department of Commerce, Government of India.

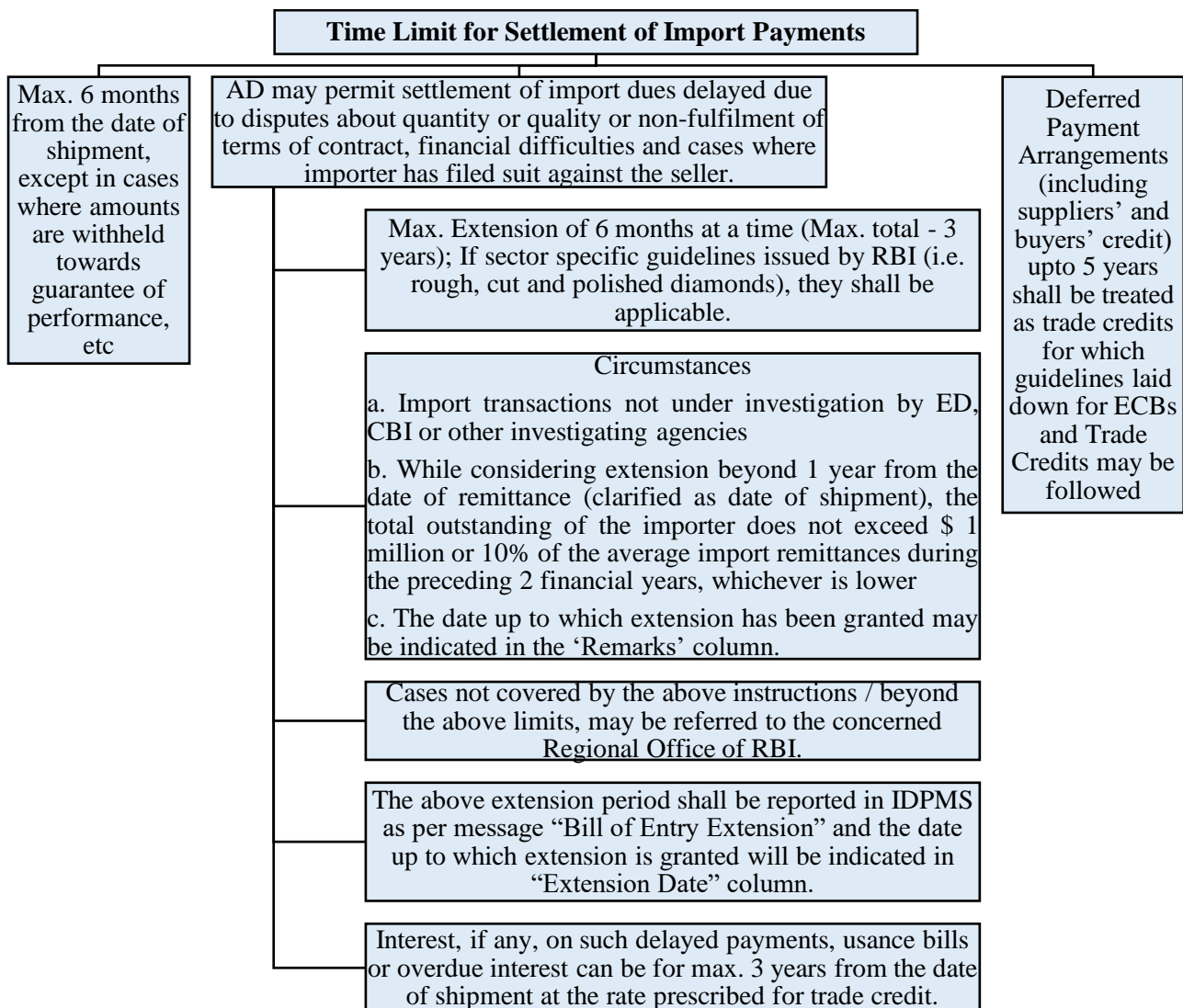
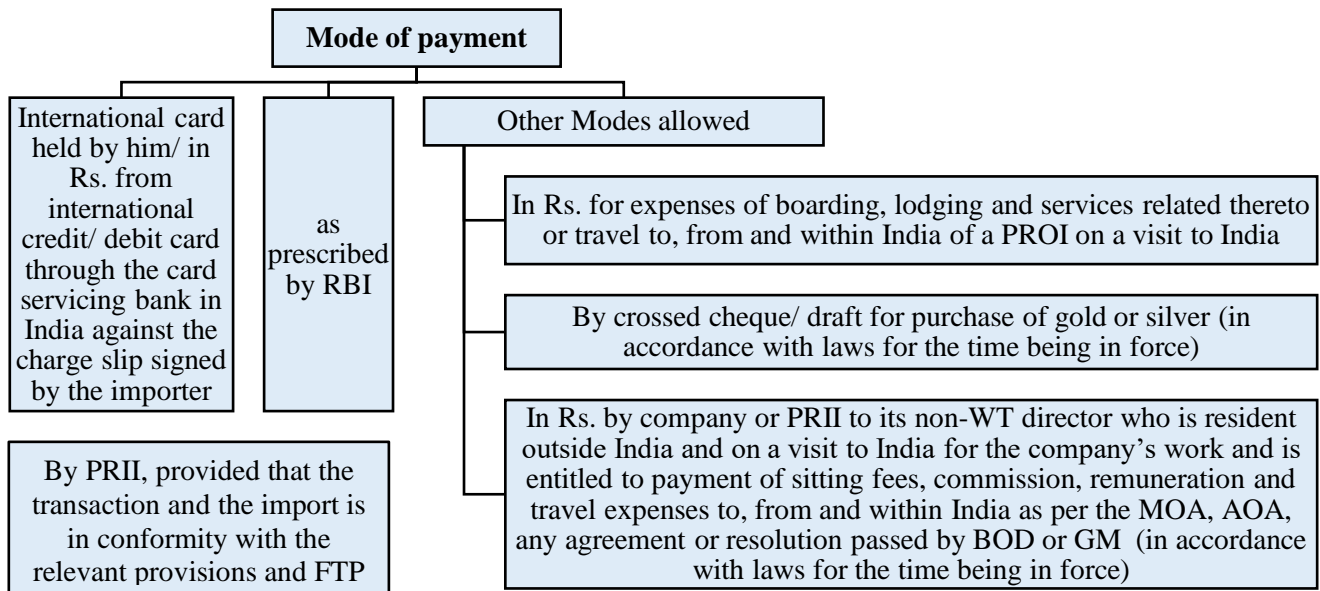
Authorised Dealer Category – I banks should ensure that the imports into India are in conformity with the FTP, FEM(Current Account Transactions) Rules, 2000 and Directions issued by RBI.

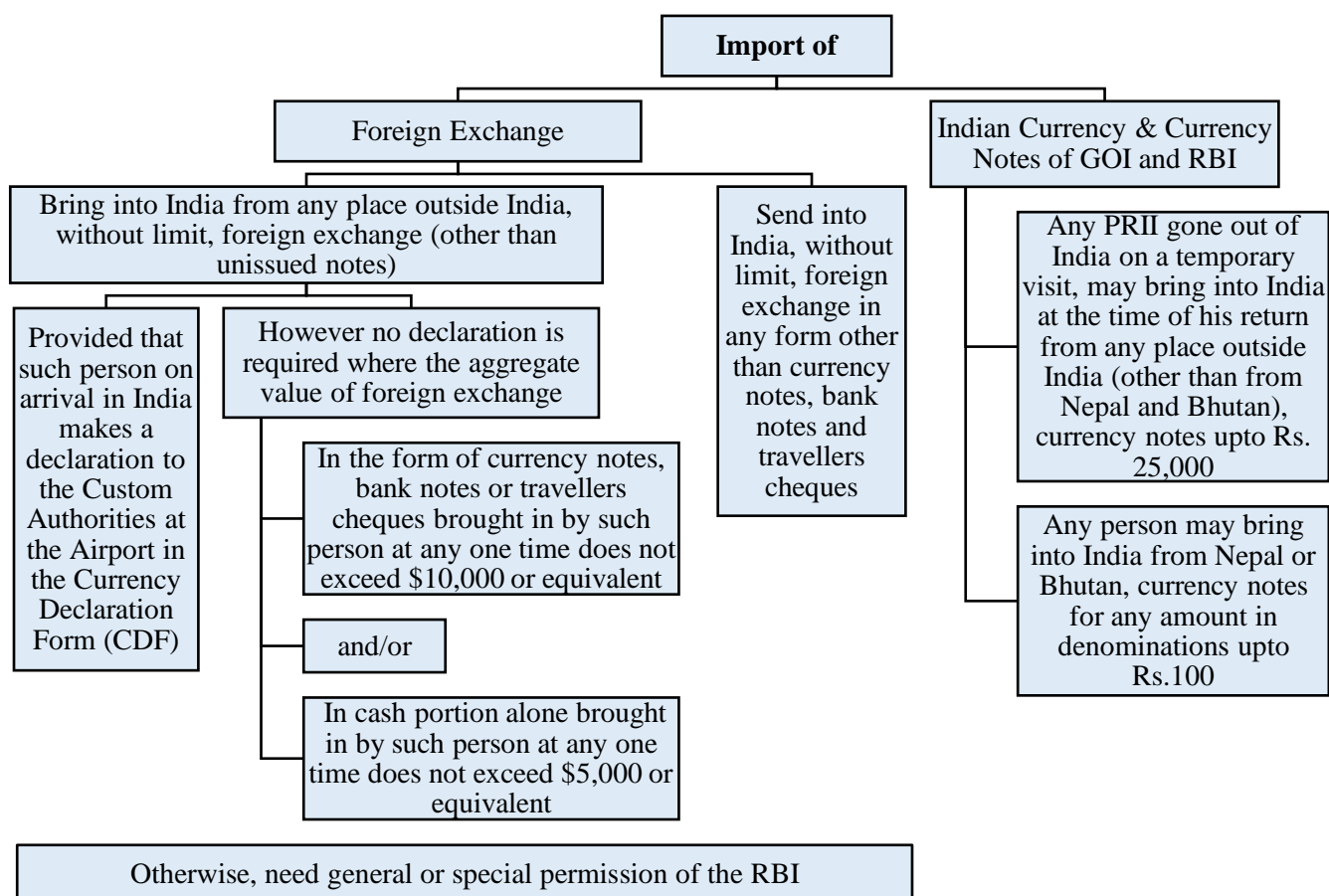
General Guidelines for Imports [Section II]

This consists of rules and regulations to be followed by Authorised Dealer (AD) from the foreign exchange angle while undertaking import payment transactions on behalf of their clients.

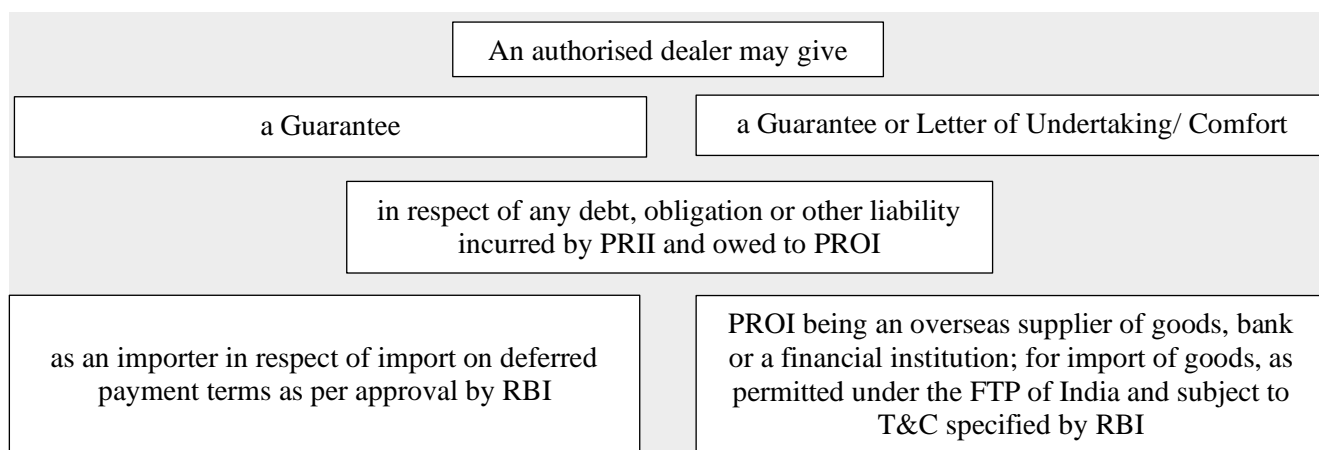
Where specific regulations do not exist, AD may be governed by normal trade practices and it may particularly adhere to "Know Your Customer" (KYC) guidelines (issued by Reserve Bank) in all their dealings.







Issue of Guarantees by an Authorised Dealer



An authorised dealer may, in the ordinary course of his business, give a guarantee in favour of a non-resident service provider, on behalf of a resident customer who is a service importer, subject to T&C stipulated by RBI	
<u>Service importer</u>	<u>Limit on amount of Guarantee</u>
Public Sector Company or a Department / Undertaking of the Government of India / State Government	Upto \$ 100,000 or its equivalent Beyond, need the prior approval of the Ministry of Finance, GOI
Other	Upto \$ 500,000 or equivalent

An authorised dealer may permit PRII to issue corporate guarantee in favour of an overseas lessor for financing import through operating lease in conformity with the FTP, FEM(Current Account Transactions) Rules, 2000 and Directions of RBI.

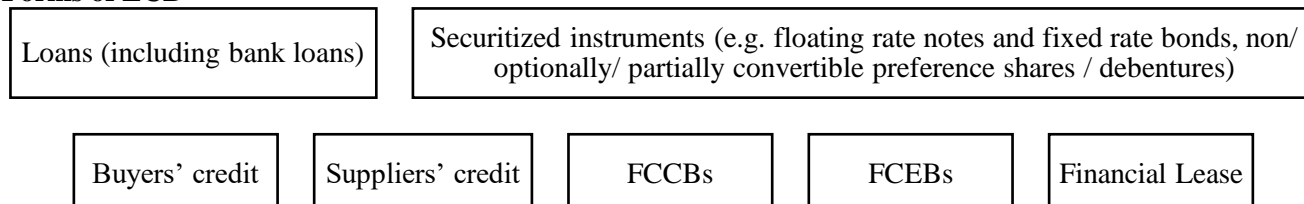


1.2 Framework for raising loans through External Commercial Borrowings (ECBs)

Transactions on account of ECBs are governed by section 6(3)(d) of FEMA. ECBs are commercial loans raised by eligible resident entities from recognised 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 parameters apply in totality and not on a stand-alone basis.

Note – ‘All-in-Cost’ includes rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or INR but will not include commitment fees, pre-payment fees / charges, withholding tax payable in INR.

Forms of ECB



Note –

- However, ECB framework is not applicable in respect of the investment in Nonconvertible Debentures (NCDs) in India made by Registered Foreign Portfolio Investors (RFPIs).
- FCEBs can only be raised under the approval route; rest under both.

Framework for raising loans through ECB		
Track I	Track II	Track III
Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.	Long term foreign currency denominated ECB with minimum average maturity of 10 years.	INR denominated ECB with minimum average maturity of 3/5 years.
Manufacturing sector companies may raise foreign currency denominated ECBs with minimum average maturity period of 1 year.	-	Manufacturing sector companies may raise INR denominated ECBs with minimum average maturity period of 1 year.
Eligible Borrowers		
<ul style="list-style-type: none"> • Companies in manufacturing and software development sectors • EXIM Bank (only under the approval route) • Units in SEZs • SIDBI • Companies in infrastructure sector • Airlines companies • Housing Finance Companies (regulated by NHB) & NBFCs (IFCs, AFCs, Holding Companies & CICs) • Shipping Companies & Port Trusts (constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908) 	<ul style="list-style-type: none"> • All entities listed under Track I. • REITs and INVITs coming under the regulatory framework of SEBI 	<ul style="list-style-type: none"> • All entities listed under Track II. • All NBFCs coming under the regulatory purview of RBI • NBFCs - Micro Finance Institutions (NBFC-MFIs), NGOs engaged in micro finance activities • Not for Profit companies, societies, trusts and cooperatives (registered under the Societies Registration Act, 1860, Indian Trust Act, 1882 and State-level/ Multilevel/ State-level mutually aided Cooperative Acts) • Companies engaged in miscellaneous services – R&D, training (other than educational institutes), supporting infrastructure, logistics & freight forwarding, maintenance/ repair & overhaul • Developers of SEZs/ National Manufacturing and Investment Zone
Note – Entities engaged in micro-finance activities to be eligible to raise ECB should have a satisfactory borrowing relationship for at least 3 years with an AD Category I bank in India and have a certificate of due diligence on ‘fit and proper’ status from the AD Category I bank.		

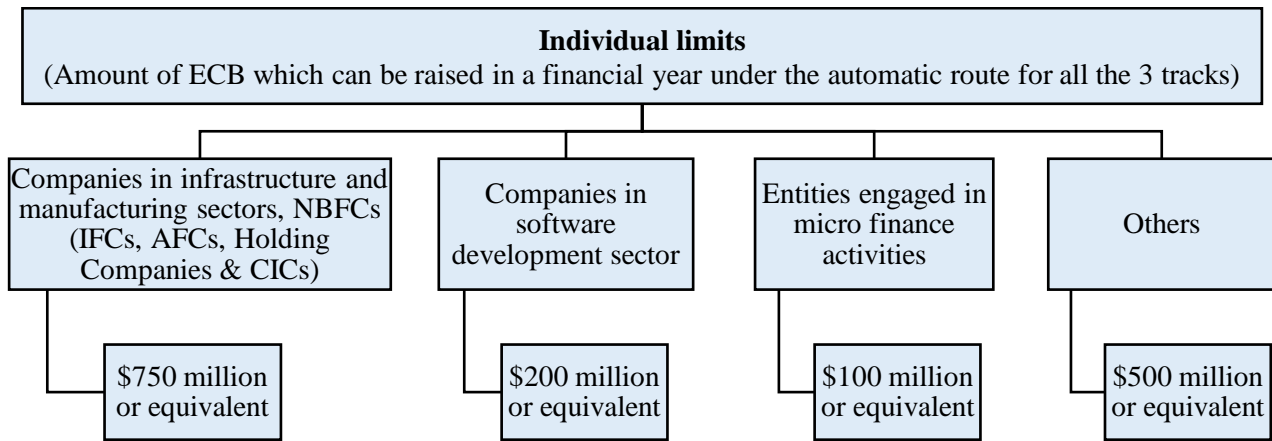


Recognised lender		
<ul style="list-style-type: none"> International banks & Overseas branches / subsidiaries of Indian banks Foreign equity holders International capital markets Export credit agencies Overseas long-term investors such as: <ul style="list-style-type: none"> Prudentially regulated financial entities Pension funds Insurance companies Sovereign Wealth Funds Financial institutions located in IFCs in India Multilateral financial institutions (eg: IFC, ADB), regional financial institutions and Government owned (wholly/ partially) financial institutions Suppliers of equipment 	All entities listed under Track I except overseas branches/ subsidiaries of Indian banks.	All entities listed under Track I except overseas branches/ subsidiaries of Indian banks. In case of NBFCs-MFIs, other eligible MFIs, not for profit companies and NGOs, ECB can also be availed from overseas organisations and individuals.
<p>Overseas Organizations proposing to lend ECB would have to furnish to the AD bank of the borrower a certificate of due diligence from an overseas bank. Such would in turn, be subject to host-country regulators and such host country must adhere to Financial Action Task Force (FATF) guidelines on anti-money laundering (AML)/ combating the financing of terrorism (CFT), otherwise would not be eligible to extend ECB.</p> <p>The certificate of due diligence should comprise that:</p> <p>(i) Lender maintains an account with the bank at least for a period of 2 years</p> <p>(ii) Lending entity is organised as per the local laws and held in good esteem by the business/ local community</p> <p>(iii) No criminal action pending against the lender</p> <p>Other evidence /documents such as audited statement of account and income tax return, which the overseas lender may furnish, need to be certified and forwarded by the overseas bank.</p>		

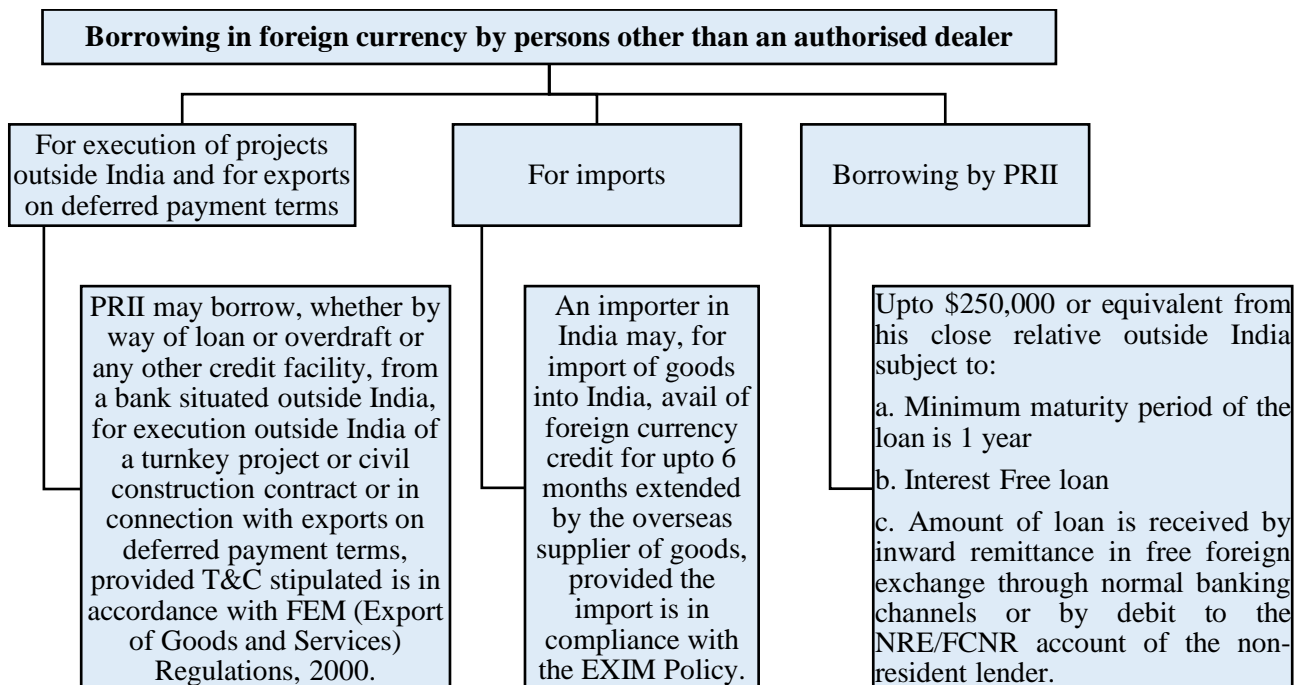
Available routes for raising ECB

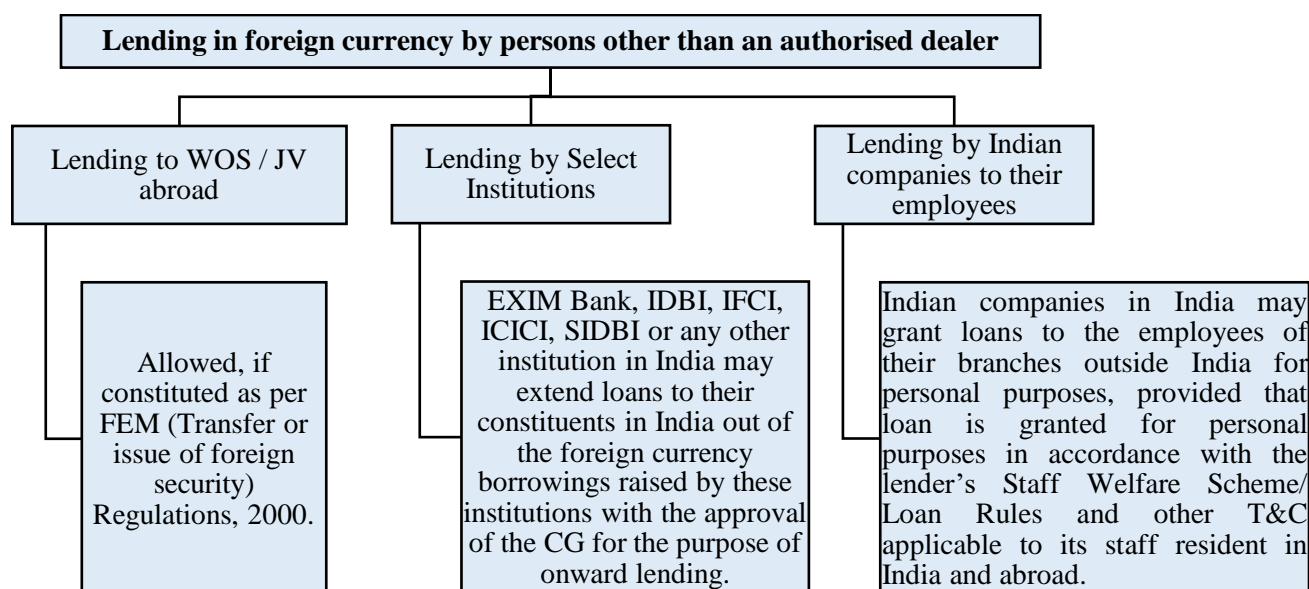
Automatic route	Approval route	
For the automatic route, the cases are examined by the Authorised Dealer Category-I banks.	Under the approval route, the prospective borrowers are required to send their requests to the RBI through their ADs for examination.	
The borrower may approach an AD Category I bank with their proposal along with duly filled in Form 83.	The borrower may approach the RBI with an application in Form ECB for examination through their AD Category I bank.	Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals above certain threshold limit would be placed before the Empowered Committee (having external & internal members) and RBI will take a final decision after taking into account recommendation of the Empowered Committee.



**Note –**

- a. ECB proposals beyond aforesaid limits will come under the approval route.
- b. For calculating individual limits under Track III, exchange rate prevailing on the date of agreement should be taken into account.
- c. In case, ECB is raised from direct equity holder, individual ECB limits will **also** subject to **ECB liability: equity ratio** requirement. The ECB liability of the borrower (including all outstanding ECBs and the proposed one) towards the foreign equity holder should not be more than 7 times of the equity contributed by the latter. However, no need to follow ratio if total of all ECBs raised by an entity is up to \$5 million or equivalent. Paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet can be considered.





Some Restrictions

(i) Indian companies or their ADs are not allowed to issue any direct or indirect guarantee or create any contingent liability or offer any security in any form for such borrowings by their overseas holding / associate / subsidiary / group companies except for the purposes explicitly permitted in the relevant Regulations.

(ii) Further, funds raised abroad by overseas holding / associate / subsidiary / group companies of Indian companies with support of the Indian companies or their ADs as mentioned at (i) above cannot be used in India unless it conforms to the general or specific permission granted under the relevant Regulations.

(iii) Indian companies or their ADs using or establishing structures which contravene the above shall render themselves liable for penal action as prescribed under FEMA.

1.2 Overseas Direct Investments by Resident Individuals in JV & WOS

In exercise of the powers conferred under Section 6 the Act, RBI issued FEM (Transfer or Issue of any Foreign Security) Regulations. This seeks to regulate acquisition and transfer of a foreign security by a person resident in India i.e. investment (or financial commitment) by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a person resident in India in shares and securities issued outside India.

Relevant definitions

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

- (i) contribution to the capital or subscription to the Memorandum of a foreign entity, or
- (ii) 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. (Portfolio investments are investments in the form of a group (portfolio) of assets, including transactions in equity, securities, such as common stock, and debt securities, such as banknotes, bonds, and debentures.)

A resident individual (singly or with another resident individual or with an Indian Party) satisfying the criteria as per Schedule V, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a JV or WOS outside India. The limit for such shall be within the overall limit prescribed under the Liberalised Remittance Scheme.

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 JV or WOS.

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, a body created under an Act of Parliament, a partnership firm registered under the Indian Partnership Act, 1932 or a LLP registered under the Limited Liability Partnership Act, 2008, making investment in a JV or WOS abroad, and includes any other entity in India as may be notified by RBI.

When more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party".

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

Mode of direct investment or financial commitment outside India	
Automatic Route	Approval Route
<p>Limit permissible – 400% of the net worth (Paid up capital + Free Reserves) as per the last audited balance sheet</p> <p>The total financial commitment of the Indian Party in all JVs/ WOSs shall comprise:</p> <ol style="list-style-type: none"> 100% of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS) 100% of other preference shares 100% of amount of loan 100% of the amount of guarantee (other than performance guarantee) issued by the Indian Party 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS, provided the bank guarantee is backed by a counter guarantee / collateral by the Indian Party. 50% of the amount of performance guarantee issued by the Indian Party (If the outflow on account of invocation of performance guarantee results in the breach of the limit, prior permission of RBI needs to be obtained before executing remittance beyond the limit prescribed for the financial commitment.) <p>In case of financial commitment(s) exceeding \$1 billion or equivalent in a financial year, prior approval of RBI shall be required even if the total FC is within the eligible limit under the automatic route.</p>	<p>For all other cases, prior approval of RBI would be required.</p> <p>RBI should take into account the following factors while considering the applications:</p> <ol style="list-style-type: none"> 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 Expertise and experience of the Indian Party in the same or related line of activity as of the JV / WOS outside India
<p>Criteria</p> <ol style="list-style-type: none"> Within above limits for any bonafide activity permitted by the host country; However, the limit shall not be applicable where the investment is made out of balances held in the EEFC account or out of funds raised through ADRs/GDRs Not on RBI's exporters' caution list, list of defaulters published by the CIBIL/ RBI/ any other credit information company or under investigation by the ED/ any investigative agency/ regulatory authority All the transactions relating to the investment in a JV/WOS is routed through only one branch of an AD to be designated by the Indian Party. 	
<p>Process</p> <p>The Indian Party should approach an AD with an application in Form ODI and the other prescribed enclosures and documents.</p> <p>Investments (or financial commitment) in JV/WOS abroad by Indian Parties is also permitted to be made through a SPV.</p>	



Prohibitions on direct investment in abroad by an Indian party:

(a) Indian Parties are prohibited from making investment (or financial commitment) in foreign entity engaged in banking business or real estate (i.e. buying/ 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), without the prior approval of the Reserve Bank.

(b) An overseas entity, having direct or indirect equity participation by an Indian Party, shall not offer financial products linked to INR (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank.

General Permission

General permission has been granted to PRII for acquisition of securities:

- (a) out of the funds held in RFC account
- (b) as bonus shares on existing holding of foreign currency shares
- (c) when not permanently resident in India, out of their foreign currency resources outside India.

General permission is also available to sell the shares so purchased or acquired.

