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India News:

New External Commercial Borrowing Framework

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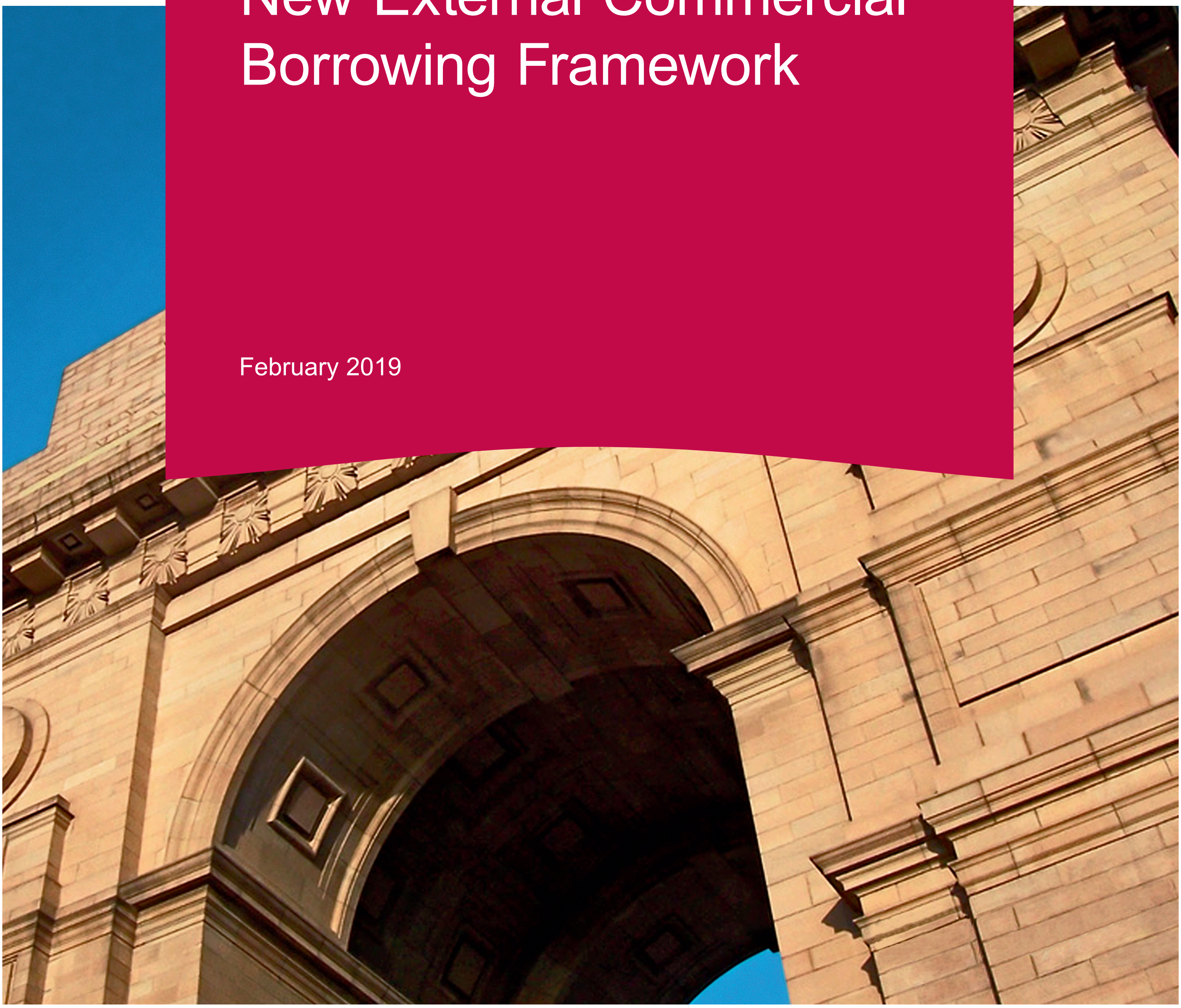

Introduction

On January 16th, 2019, the Reserve Bank of India ("RBI") announced a new External Commercial Borrowing ("ECB") Framework in order to simplify the provisions and improve the ease of doing business in India.

External commercial borrowings are loans made by foreign lenders to Indian borrowers.

The revised ECB guidelines bring significant changes making it easier for Indian entities to avail loans from foreign lenders under the automatic route without prior approval of the RBI.

The new framework has replaced the four-tier structure with a consolidated and simplified two-tier structure. It has expanded the circle of eligible borrowers to include all entities which are eligible to obtain foreign direct investment ("FDI"). It has also reduced the negative-list of prohibited end uses allowing loans from foreign equity holders for general corporate purposes or as working capital, as well as for repaying Rupee loans.

Key Changes

Eligible Borrowers:

In December 2018 the term "Indian entity" was redefined through the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 to include a Limited Liability Partnership under the LLP Act, 2008.

Under the old ECB framework eligible borrowers were however restricted to manufacturing companies, special economic zone units, software companies, non-banking financial companies, etc. Service companies and trading entities were not eligible for ECB.

Under the new ECB framework the list of "eligible borrowers" has been further expanded to include all entities eligible to receive FDI plus port trusts, units in SEZ, registered entities engaged in micro-finance activities, NGOs (only INR ECB) etc.

This is a significant change and would resolve funding issues for service and trading companies which so far had to rely only on equity capital from their parent companies for funding.

End-uses:

In the negative list of prohibited end-uses an exception has been introduced, so as to allow foreign equity holders to provide ECB for working capital, general corporate purposes and repayment of rupee loans under the automatic route.

The change brings a significant advantage for parent companies which are considering financing their Indian subsidiary through an Intercompany loan.

Minimum Average Maturity Period (MAMP):

The general MAMP will be 3 years for all ECBs with the following two exceptions:.

1. MAMP for ECBs for manufacturing sector companies will be 1 year;

2. MAMP for ECBs for working capital, general corporate purposes or repayment of rupee loans will be 5 years.

Limit and leverage

The different sectoral individual limits per year (from 100m up to 750m USD for infrastructure companies) under the earlier framework have been revised and unified. The general limit is now USD 750 million or equivalent and for Startups up to 3m USD per year.

If outstanding amount of all ECB, including the proposed one, is over 5m USD, the ECB liability-equity ratio should not exceed 7:1.

Late submission fee

A delay in reporting of drawdown before obtaining a loan registration number (LRN) from the RBI or a delay in filing monthly returns can now be regularized by payment of Late submission fee. The fees vary according to the delay:

- up to 30 days 5,000 INR;
- up to 3 years 50,000 INR per year; and
- above 3 years – 100,000 INR per year.

Procedure:

ECBs can be obtained under the automatic route if they conform with the criteria prescribed in the framework or under the approval route for all other cases.

Borrowers are required to obtain a LRN number from RBI and report monthly of actual transaction or whenever there is a change in terms and conditions of the ECB.

Recommendations:

Evaluating the current situation of the company and if financing is required, consider raising a foreign loan as an alternative to increasing the share capital or a loan from a domestic lender.

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