EXTERNAL COMMERCIAL BORROWING (ECB) (AUTOMATIC ROUTE) – PRACTICAL APPROACH

SYNOPSIS:-

A. Introduction
B. Meaning of ECB
C. Types of Routes for Raising (ECB)
D. Points to be remembered while scrutiny

A. **Introduction: -** In the present scenario of globalization and modernization, cross border transactions have become part & parcel of the routine business activity for any corporate entity and external commercial borrowing ("ECB") is one of the common mode for financing such transactions. This has opened new avenue of practice to Company Secretaries in practice as Company Secretaries are eligible for certifying all the forms/ returns relating ECB. However, the professionals are expected to shoulder enormous responsibilities arising out of such certifications. And therefore, before such certification every Company Secretary has to ensure that the information mentioned in the form/return relating to ECB are true & correct in all respect.

B. **Meaning of ECB: -** In common parlance, the term ECB refers to a Loan from outside India. However, as per the master circular issued by the Reserve Bank of India (RBI) it is defined as

a. Commercial loans in the form of bank loans, buyers' credit, suppliers' credit, and securitized instruments (e.g. floating rate notes and fixed rate bonds) availed of from non-resident lenders with minimum average maturity of 3 years.

b. Foreign Currency Convertible Bonds (FCCBs) i.e. a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency.

c. Preference shares (i.e. non-convertible, optionally convertible or partially convertible) for which, funds have been received on or after May 1, 2007 are considered as debt.

C. **Types of Routes for raising ECB: -** There are two routes

a. Automatic Route: Following criteria as given under the ECB master circular of 1st July, 2009 are required to be met simultaneously:
   i). Borrowing Limit

ii). Eligible Borrower
iii).Recognized Lender
iv).All-in-cost ceiling
v).End use

b. Approval Route: - If any of criteria given under automatic route are not fulfilled then you have to follow Approval Route.

D. Points to be remembered while scrutiny: - Under both the routes there are different forms which are required to be filled **and following are the information which needs to be checked before certifying**

i). Under Automatic Route

a. Form – 83: - Under Automatic route, within 7 working days of signing of the Contract you are required to file Form – 83 to RBI through Authorized Dealer ("AD") for allotment of Loan Registration Number ("LRN"). Points which are required to be checked are represented in table below

S.No.	Information	Particulars
1.	Contract	Check the particulars of the Contract and match them with the criteria given in the master circular under the route. Especially, eligibility of the Borrower, recognized Lender, Amount & Maturity, all-in-cost ceiling, end use, Guarantee & Security.
2.	Working days	Ensure that the form is being filed with the AD within 7 working days from the date of signing of contract.
3.	Lender Category	If the lender is a foreign equity holder and i). he lends for amount less than 5 mn USD then he should hold at least 25 % equity directly. ii). he lends for amount more than 5 mn USD then minimum paid up equity of 25 per cent should be held directly by the lender and debt-equity ratio should not exceed 4:1 (i.e. the proposed ECB not exceeding four times the direct foreign equity holding).
4.	Maturity Details	Please ensure that average maturity period will be 3 years or more. Check date of drawdown and date on which loan will paid in full. Time period between the draw down and repayment date should be equal to or more then 3 years.
5.	Purpose of Borrowing	Here check the purpose of the Loan. It should not be used for restricted uses.

6.	All-in-cost ceiling	Ensure that all-in-cost (which includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees) does not exceed; i). If average maturity period is for 3 yrs and up to 5 yrs. — 3 % +6th month LIBOR at the date of Contract. ii). If average maturity period is for more then 5 yrs. — 5 % +6th month LIBOR at the date of Contract.
7.	Guarantee	Issuance of Guarantee, standby letter of credit, letter of undertaking or letter of comforts by banks, financial institution & NBFC from India are not permitted.
8.	Security	The choice of security to be provided to the lender/supplier is left to the borrower. However, creation of charge over immoveable assets and financial securities such as shares, in favour of the overseas lender is subject to the regulation of the RBI made in that regard.

b. Form ECB – 2 : - After receiving LRN, the Company is required to file monthly ECB – 2 return through authorized dealer to the Director, Department of Statistics and Information Management (DSIM), Balance of Payments Statistics Division, Reserve Bank of India, C-8/9, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051 within 7 working days from the close of month. Even if there is no transaction during a particular period, a 'Nil' return should be submitted.

S.No.	**Information**	**Particulars**
1.	Working days	Ensure that the form is being filed with the AD within 7 working days from the end of the month.
2.	Check LRN	For checking LRN, check the letter issued by the RBI.
3.	Loan Amount	Refer Contract for checking the currency and the amount of the Loan.
4.	Draw down & Loan committed details	For checking draw down, refer bank account slip of the company for the respective month. Loan amount committed but not yet drawn will be – Loan amount less cumulative amount i.e. amount drawn from date of the receipt of LRN till last day of the respective month.
5.	Schedule of Draw Down	Refer to the contract for the schedule of draw down of the Loan Amount.
6.	Details of	Refer to bank account slip of the Company and the

	utilization of draw down	invoices for the expenditure. Also cross check the purpose of expenditure with the contract and form 83. If there is any reservation then accordingly, qualify the certification.
7.	Amount parked abroad	If loan amount is parked abroad, then check the details with the Bank Slip of that account.
8.	Utilization from the amount parked abroad.	If fund is utilized from the account maintained abroad, then check Bank slip of that account with the invoices and the Contract. If there is any reservation then qualify the certification accordingly.
9.	Debt Servicing	If any payment is made towards principal/interest, then check such details with the terms of the contract.
10.	Derivative transaction	If any such transaction is entered, then check the details with the contracts authorizing such transactions.
11.	Revised Schedule	If any changes are made in the terms of 'repayment schedule' then check these details with the contract authorizing such changes.
12.	Loan outstanding	This will be the total of the loan drawn plus loan committed but not yet drawn. It can also be checked by deducting total amount drawn at the end of the respective month from total Loan amount.

Source: - RBI master circular on External Commercial Borrowing July 1, 2009

Disclaimer: - Due care has been taken for putting the above information, however above information is general in nature which may be differ from situation to situation. This article is advisory in nature and in no case author is liable for any loss/es.

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