

ALLEN & OVERY

The Reserve Bank of India relaxes restrictions on foreign lending

The Reserve Bank of India (RBI) has announced a series of policy changes, which include (i) the relaxation of its External Commercial Borrowing (ECB) framework and (ii) the withdrawal of certain restrictions on investment by Foreign Portfolio Investors (FPI) in corporate debt. These changes open up new opportunities in the Indian market for international lenders and debt funds.

ECB FRAMEWORK RELAXED FOR BIDDERS IN AN INSOLVENCY PROCESS

The ECB regime regulates the provision of loans and debt capital market instruments raised by domestic companies from foreign financial entities.

In a circular issued on 7 February 2019, the RBI set out certain policy changes to relax the rules which prevented proceeds of ECB denominated in either foreign currency or Indian Rupee (INR) from being utilised for the repayment or for on-lending for the repayment of domestic INR loans. The new rules allow bidders to raise debt from international lenders or funds in order for the bidder to use the proceeds to repay the domestic INR denominated debts of an Indian target company, which is in the Indian corporate insolvency process.

Removing barriers for bidders to access foreign capital looks to bolster an active market in acquisitions of targets in insolvency, offering bidders a wider range of options to raise affordable debt.

Although lenders will still require RBI approval to lend to a bidder, the new rules raise an expectation that such approval should be straightforward and reflects a policy shift towards encouraging overseas investment in India. Lenders of such debt will also not have to register as FPIs. Loans can be denominated in any currency and governed by English law agreements, with lenders being able to take the direct benefit of security in more credit-worthy bidcos.

Although this relaxation is limited to bidders for targets that are in insolvency (and not those undergoing pre-insolvency restructuring), it will help to relieve pressure on the domestic banking sector which is currently stressed and over-extended and will grant international lenders and funds unprecedented access to the Indian distressed debt market and open up refinancing opportunities.

RESTRICTIONS TO BE LIFTED FOR INVESTMENT IN CORPORATE DEBT

Foreign investors seeking exposure to INR denominated debt (without being subject to the restrictions of the ECB regime) have historically been able to lend by procuring FPI registrations which

enables them to invest in non-convertible debentures issued by Indian corporates. In 2018, the RBI had introduced restrictions preventing any single FPI from investing more than 20 percent of its corporate bond portfolio in a single Indian corporate group and from holding more than 50 percent of any tranche of non-convertible debentures. On 15 February 2019, the RBI eased this by removing the former 20 percent concentration limit (but not the tranche restriction, which remains).

The tranche restriction was viewed as less problematic, but the 20 percent concentration limit significantly disadvantaged new FPIs, without existing diversified portfolios in India. Therefore, this change will lower the entry threshold for international debt funds in India.

IMPACT FOR OUR CLIENTS

The succession of rule changes is a response to a growing appetite for Indian companies to look abroad for funding and investment and will be welcomed by international debt funds. It opens up a number of lending possibilities in the large Indian debt market.

If you have any queries or require further information please contact:



Sanjeev Dhuna

Partner, London

Tel +44 20 3088 4632
sanjeev.dhuna@allenoverly.com



Gautam Narasimhan

Partner, Singapore

Tel +65 6671 6048
gautam.narasimhan@allenoverly.com



Rishi Hindocha

Senior Associate, London

Tel +44 20 3088 4209
rishi.hindocha@allenoverly.com

This is an analysis of Indian law and does not constitute legal advice.

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. The term **partner** is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. **CA1902055**