

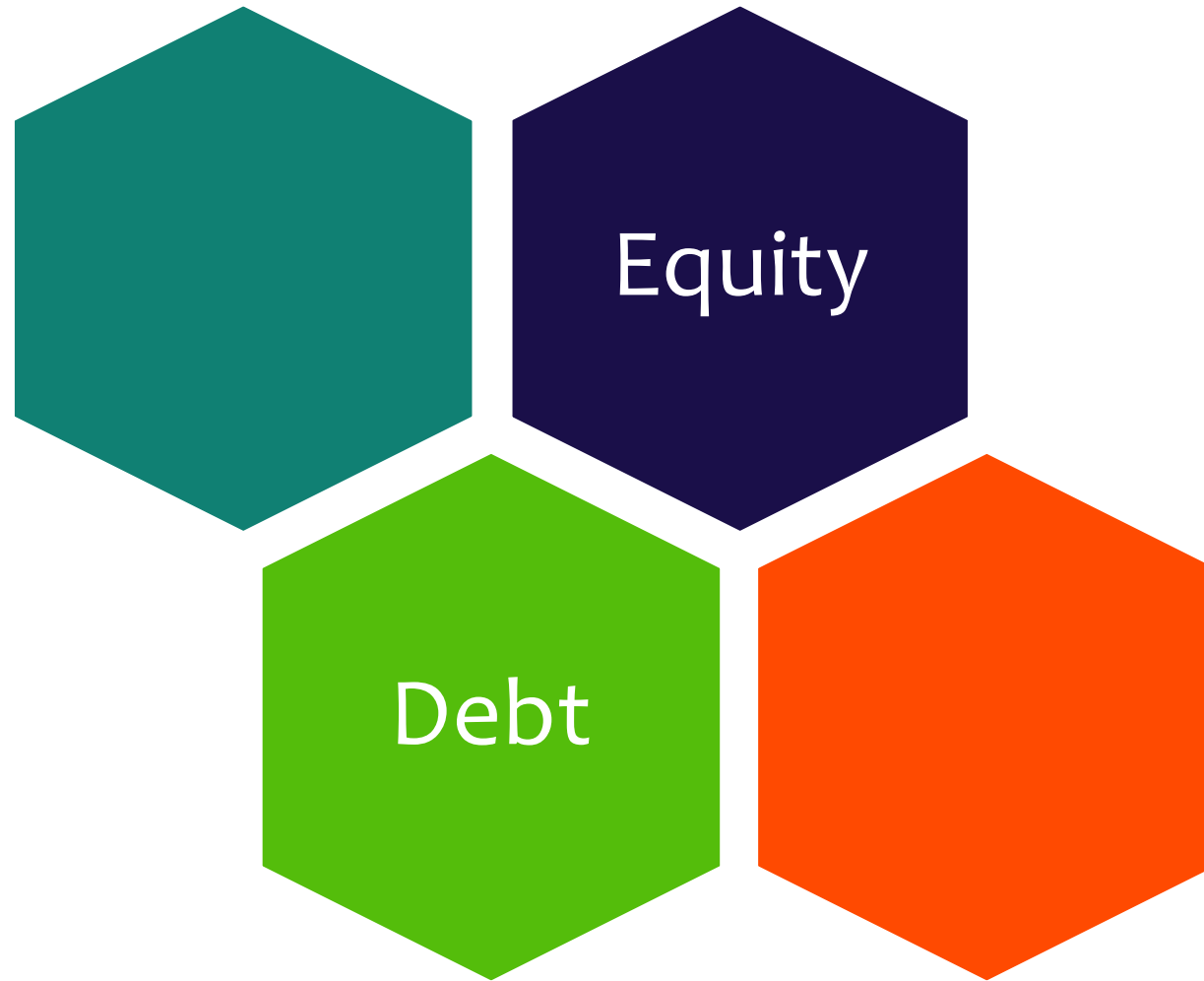


DAY 7 || Comprehensive Course on
Foreign Exchange Management, 1999

Faculty: CA. Sudha G. Bhushan
Sudha@taxpertpro.com || 09769033172

A close-up photograph of a glowing incandescent lightbulb. The bulb is the central focus, with its glass envelope and internal filament visible. The light it emits is a warm, golden-yellow color. The background is a soft, out-of-focus blue-grey. A white rectangular box is superimposed over the lower right portion of the bulb, containing the text 'Funding from Outside India' in a bold, red, serif font.

Funding from Outside India



Equity

Central
Government

Debt

Reserve
Bank of
India

Eligible Instruments for investment by Person resident outside India (PROI)

Non-Debt Instruments

Notification issued by Ministry of Finance, Central Government
[previous - FEMA (TISPRO) Regulations, 2000]

FEM (Non-debt instruments) Rules, 2019

FEM (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

Debt Instruments

Notification issued by Ministry of Finance, Central Government
[Previous - Reg 5(4) read with Schedule V of FEMA (TISPRO) Regulations, 2000]

FEM (Debt Instruments) Regulations, 2019

Ministry of Finance, Vide notification dated 16th Oct 2019

Non –Debt Instruments

All investment in equity in incorporated entities (public, private, listed and unlisted)

Capital participation in Limited Liability partnership (LLP)

All instruments of investment as recognized in the FDI policy as notified from time to time

Investment in units of alternative Investment Funds (AFIs) and Real Estate Investment Trust (REITs) and infrastructure investment Trust (InVITs)

Investment in units of mutual funds and Exchange traded Funds (EITs) which invest more than 50% in equity.

Non –Debt Instruments

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graph LR; A[Non –Debt Instruments] --- B[The junior most layer(i.e. equity tranche) of securitization structure]; A --- C[Acquisition, sale or dealing directly immovable property.]; A --- D[Contribution to trusts]; A --- E[Depository receipts issued against equity instruments];
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The junior most layer(i.e. equity tranche) of securitization structure

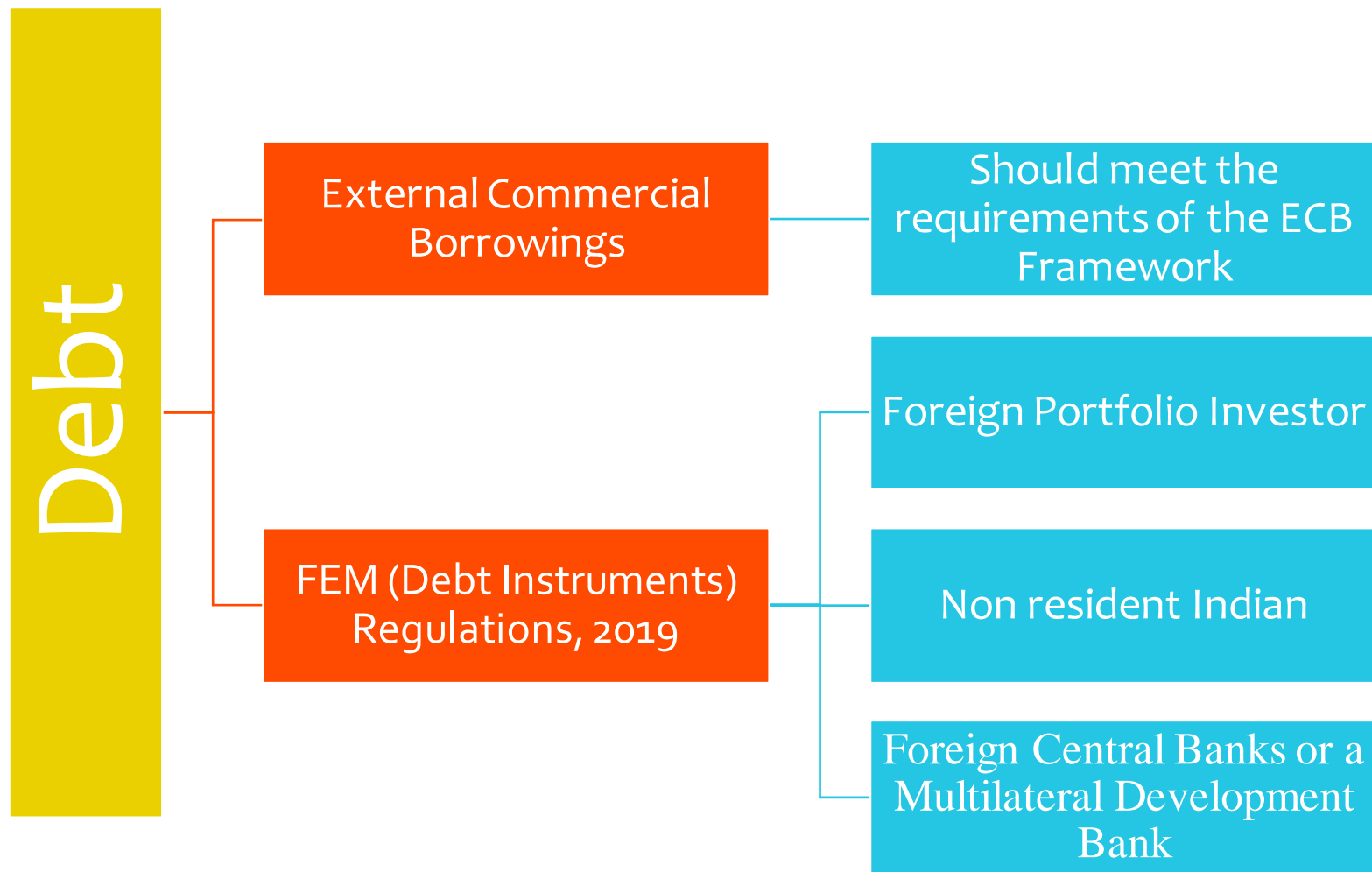
Acquisition, sale or dealing directly immovable property.

Contribution to trusts

Depository receipts issued against equity instruments

Ministry of Finance, Vide
notification dated 16th Oct 2019

All other documents which are not Non debt instruments shall be deemed as debt instruments



Purchase and sale of Debt Instruments by a person resident outside India

1. Permission to person resident outside India

A. Permission to Foreign Portfolio Investors

An FPI may purchase the following debt instruments on repatriation basis subject to the terms and conditions specified by the Securities and Exchange Board of India and the Reserve Bank:

- a. Dated Government securities/ treasury bills;
- b. Non-convertible debentures/ bonds issued by an Indian company;
- c. Commercial paper issued by an Indian company;
- d. Units of domestic mutual funds or Exchange Traded Funds (ETFs) which invest less than or equal to 50% in equity;
- e. Security Receipts (SRs) issued by asset Reconstruction Companies
- f. Debt instruments issued by banks, eligible for inclusion in regulatory capital;

g. Credit enhanced bonds;

h. Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations;

i. Securitised debt instruments, including (i) any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of assets with banks, Financial Institutions or NBFCs as originators;

j. Rupee denominated bonds/units issued by Infrastructure Debt Funds;

Provided this will include such instruments issued on or after November 22, 2011 and held by deemed FPIs

k. Municipal Bonds:

Provided that FPIs may offer such instruments as permitted by the Reserve bank from time to time as collateral to the recognized Stock Exchanges in India for their transactions in exchange traded derivative contracts as specified in sub-Regulation 2 of regulation 5.

Permission to Non-resident Indians(NRIs) or Overseas Citizens of India (OCIs)- repatriation basis

1. A non-resident Indian (NRI) or Overseas Citizens of India (OCIs) may, without limit , purchase the following instruments on repatriation basis,
 - a. Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds or Exchange Traded Securities (ETFs) which invest less than or equal to 50% in equity;
 - b. Bonds issued by Public Sector Undertaking (PSU) in India ;
 - c. Bonds issued by Infrastructure Debt Funds;
 - d. Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations;
2. An NRI or an OCI may purchase on repatriation basis debt instruments issued by banks eligible for inclusion in regulatory capital.
3. An NRI may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable:

Provided that NRI/ OCIs may offer such instruments as permitted by the Reserve Bank from time to time as collateral to the recognized Stock Exchanges in India for their transactions in exchange traded derivative contracts as specified in sub regulation 2 of regulation 5.

Permission to Non-resident Indians (NRIs) or Overseas Citizen of India (OCIs) – Non-Repatriation basis

- 1) An NRI or an OCI may, without limit, purchase on non-repatriation basis, dated Government Securities (other than bearer securities), treasury bills, units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity, or National Plan / Savings Certificate.
- 2) An NRI or an OCI may, without limit, purchase on non-repatriation basis, **listed** non-convertible / redeemable preference shares or debentures
- 3) An NRI or an OCI may, without limit, on non-repatriation basis subscribe to the chit funds authorised by the Registrar of Chits or an officer authorised by the State Government in this behalf,

Permission to Foreign Central Banks or a Multilateral Development Bank for purchase of Government Securities

- 1) Foreign Central Banks, Multilateral Development Bank or any other entity permitted by the Reserve Bank, may purchase or sell dated Government Securities / treasury bills, as per terms and condition specified by the Reserve Bank

Case Study

Can Non resident Indian give loan to proprietorship company or Partnership entity?

Case Study

What happens in cases where

- If NCD is issued to foreign institution?
- If NCD is issued to Foreign equity holder?



External Commercial Borrowings

Framework of Lending and Borrowing

Section 6 of FEMA
1999

Relevant RBI
Regulations: FEMA 1,
FEMA 3(R), FEMA 5(R),
FEMA 8 (as amended
from time to time)

RBI'S A.P. DIR Circulars
16th Jan 2019 for ECB
and 13th March 2019 for
Trade credit

RBI Master Direction
FED Master Direction
No.5/2018-19

RBI FAQs (updated
from time to time)

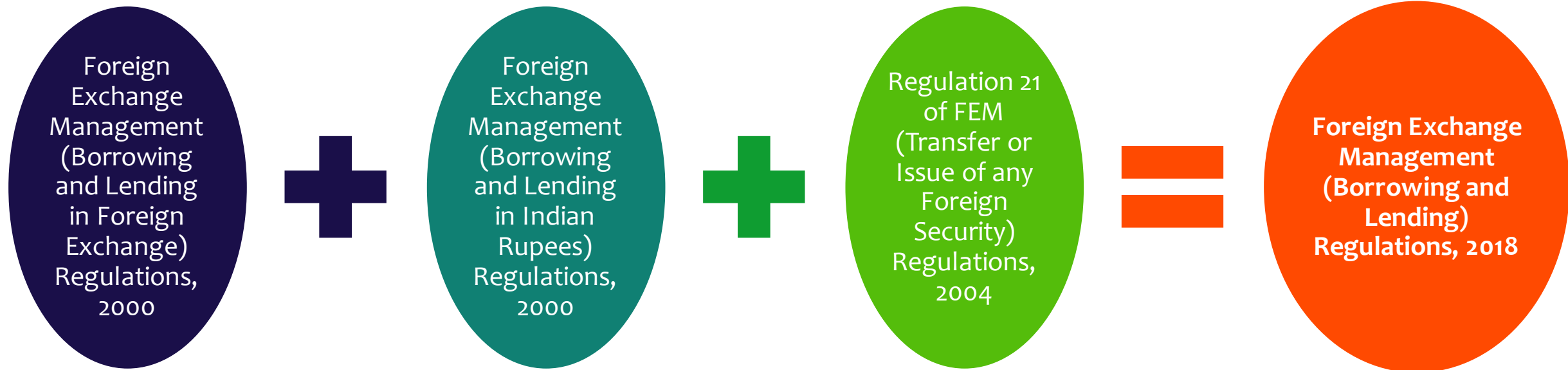
Other items - Monthly
ECB Data on RBI
Website

Framework of Lending and Borrowing

- **FEM(Permissible capital Account Transactions), 2000**
- **Foreign Exchange Management(Guarantee)Regulations, 2000**
 - Non-resident guarantee for domestic fund based and non-fund based facilities
 - Facility of Credit Enhancement
- **Foreign Exchange Management (Deposit) Regulations, 2016 [5R]**
 - (1) A company registered under Companies Act, 2013 or a body corporate created under an Act of Parliament or State Legislature shall not accept deposits on repatriation basis from a non-resident Indian or a person of Indian origin. The company may, however, renew the deposits which had been accepted on repatriation basis from an NRI or a PIO subject to terms and conditions mentioned in [Schedule 6](#).
 - (2) A company registered under Companies Act, 2013 or a body corporate, a proprietary concern or a firm in India may accept deposits from a non-resident Indian or a person of Indian origin on non-repatriation basis, subject to the terms and conditions mentioned in [Schedule 7](#).

Foreign Exchange Management (Borrowing and Lending) Regulations, 2018

Foreign Exchange Management (Borrowing and Lending) Regulations, 2018



**Investments in Foreign Securities
other than by way of Direct
Investment - FCCBs**

Foreign Exchange Management (Borrowing and Lending) Regulations, 2018

- 1. Short Title and Commencement**
- 2. Definitions**
- 3. Prohibition to Borrow or Lend**
- 4. Borrowing from outside India in Foreign Exchange by a Person Resident in India**
- 5. Lending in Foreign Exchange by a Person Resident in India**
- 6. Borrowing in Indian Rupees by a Person Resident in India**
- 7. Lending in Indian Rupees by a Person Resident in India**
- 8. Continuation of loan in the event of change in the residential status of the lender/borrower**
- 9: Any borrowing under erstwhile regulations can be continued as permitted up to the due date of repayment.**

Regulation 3

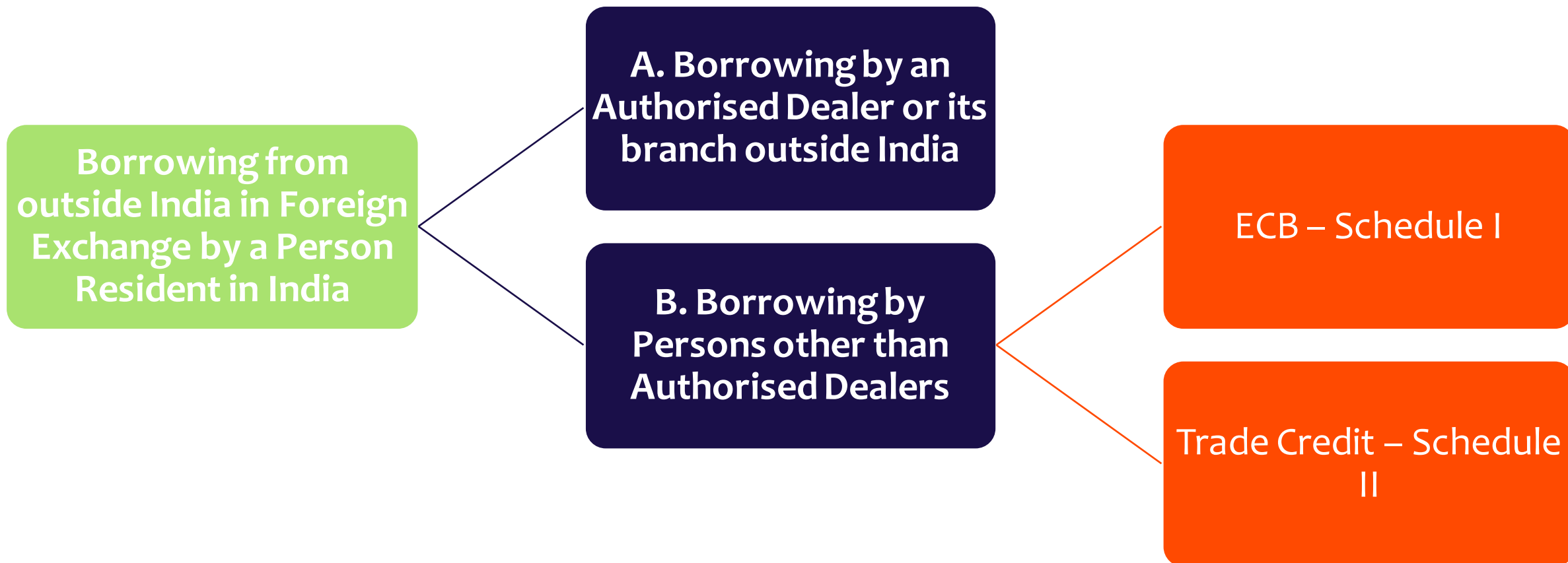
no person resident in India

- shall borrow or lend
- in **foreign exchange**
 - ❖ from or to
 - ❖ a person resident in or outside India

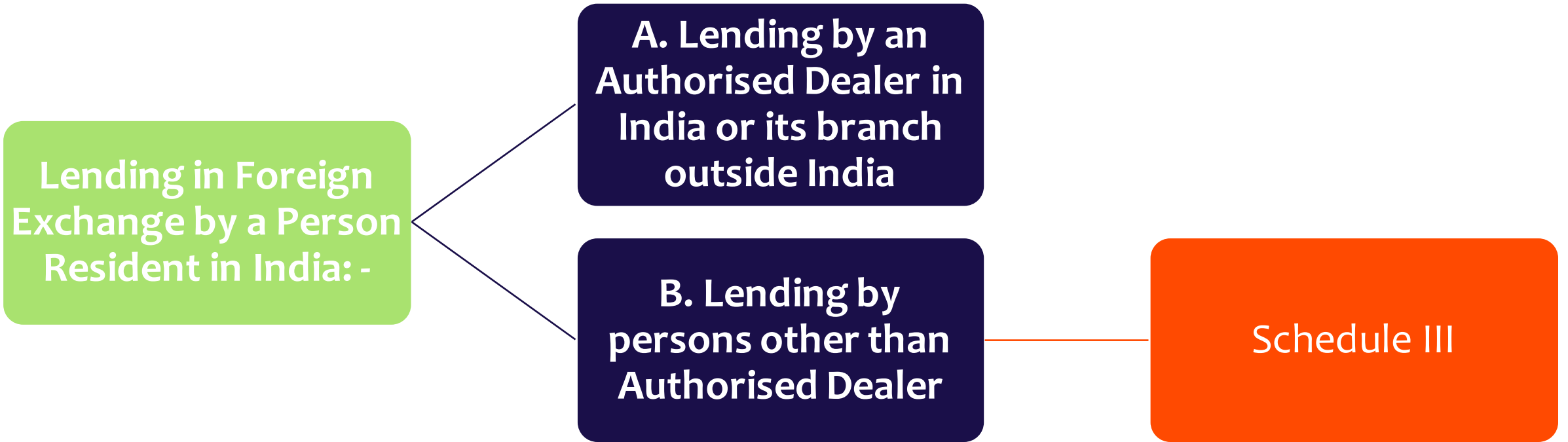
no person resident in India

- shall borrow in **rupees** from, or lend in rupees to,
 - ❖ a person resident outside India

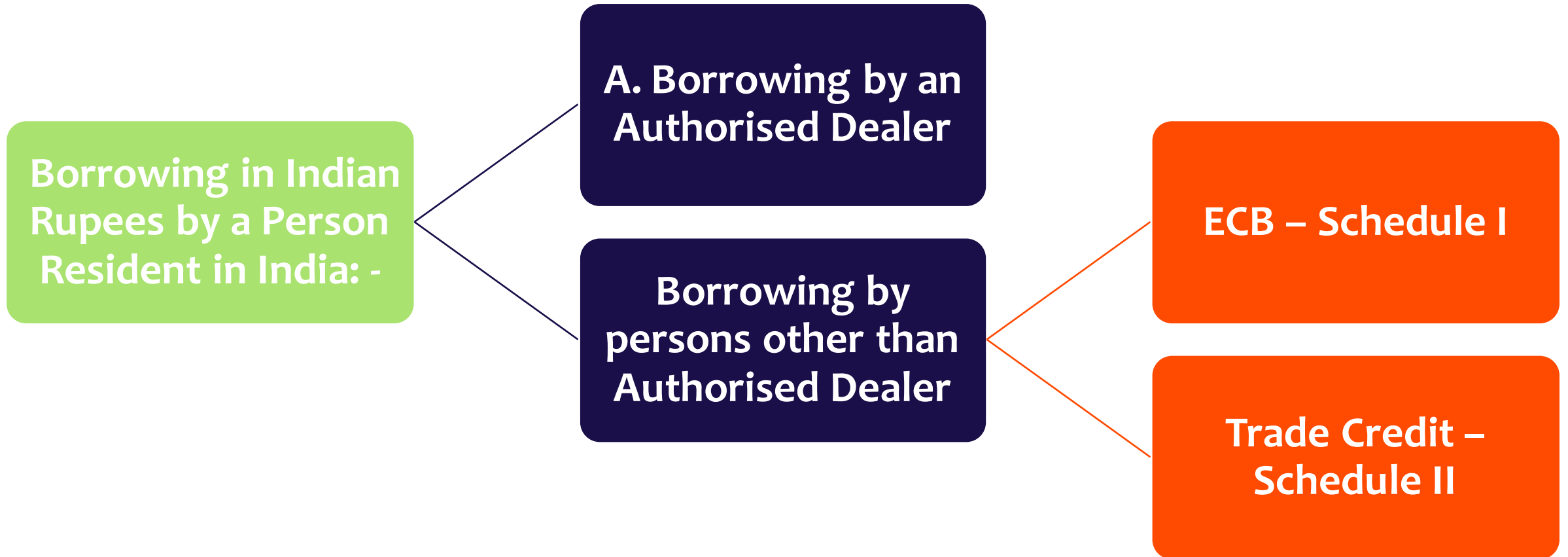
Regulation 4 || Borrowing in Foreign Exchange



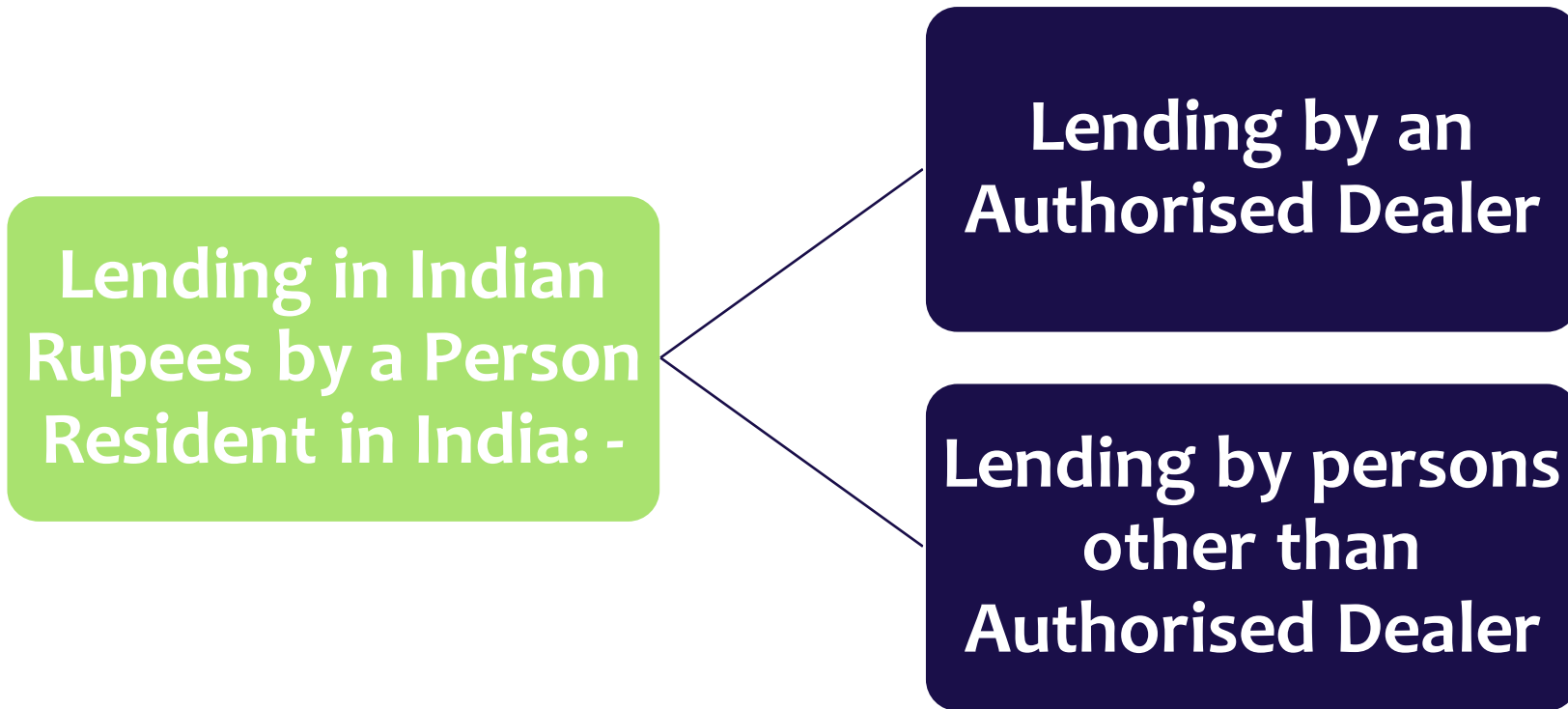
Regulation 5 || Lending in Foreign Exchange



Regulation 6 || Borrowing in Indian Rupees



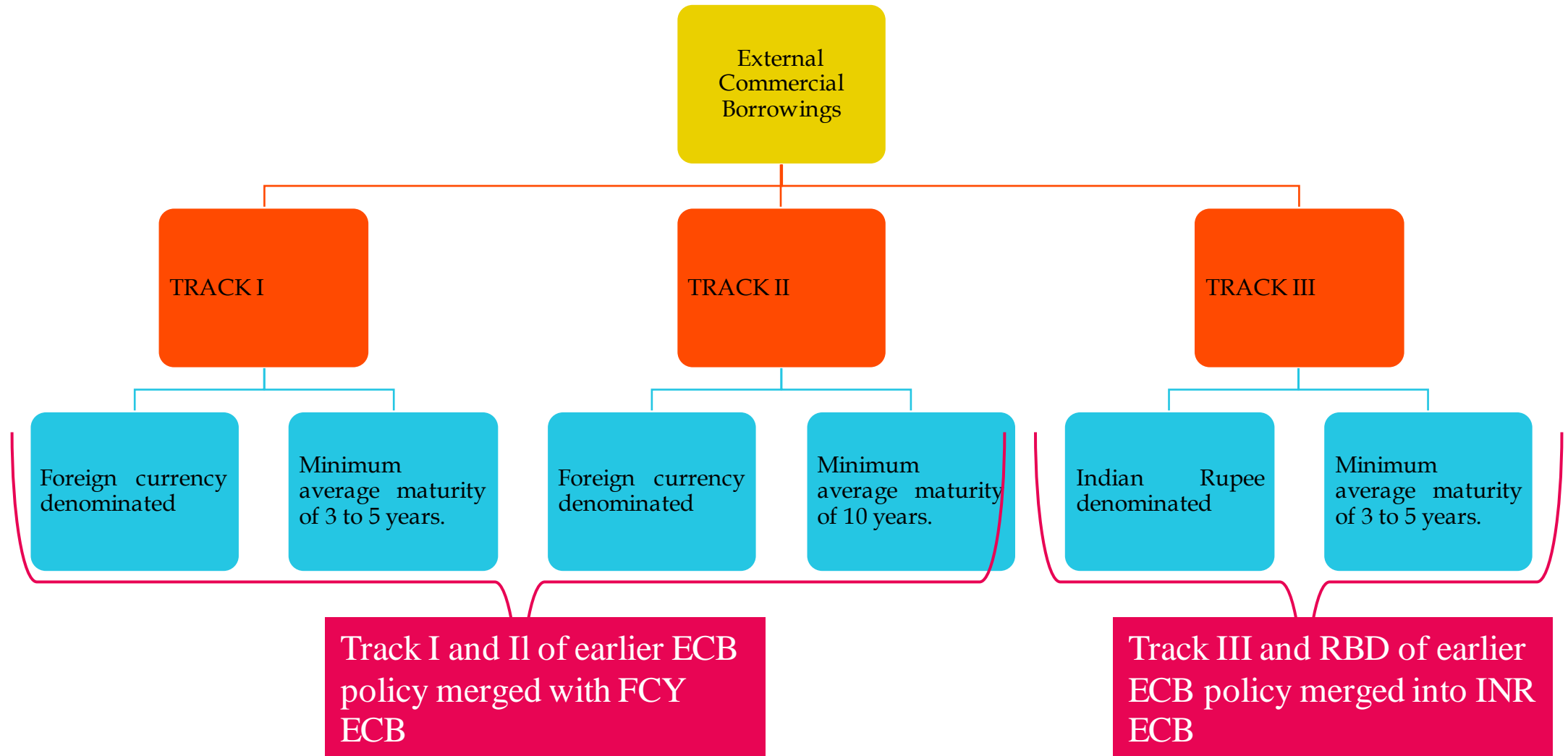
Regulation 7 || Lending in Indian Rupees by a Person Resident in India



Others

- Regulation 8 : Continuation of loan in the event of change in the residential status of the lender/borrower
- Regulation 9: Any borrowing under erstwhile regulations can be continued as permitted up to the due date of repayment.

Earlier Regime || New Regime



ECB definition

- External Commercial Borrowings are commercial loans raised by eligible resident entities from recognized non-resident entities and should conform to parameters such as minimum maturity, permitted and nonpermitted end-uses, maximum all-in-cost ceiling, etc. The parameters given below apply in totality and not on a standalone basis
- **Do FCNR (B) loans given by AD Category I banks come under the ECB framework?**
- No, foreign currency loans given domestically by AD Category I banks out of the proceeds of FCNR (B) deposits do not come under the ECB framework.

Conditions for ECB

Limits and Currency	Currency - INR & Foreign Exchange	Forms of ECBs	Eligible Borrower	Recognized Lenders
MAMP	All-in-cost ceilings	Other costs	End-use (Negative List)	Exchange Rate for conversion
	Hedging provisions	Change in Currency of Borrowings	Other conditions	

Individual limit of borrowing

- ECB up to USD 750 million or equivalent **per financial year** irrespective of the category of borrower under automatic route
- Any amount exceeding the above - Approval Route

Currency

- ECB can be raised in any freely convertible foreign currency as well as in Indian Rupees as stipulated

FAQ 19. Can an eligible borrower simultaneously raise both Foreign Currency and INR denominated ECBs?

Yes, as long as the ECBs are in compliance with the ECB guidelines for the respective currencies as per RBI guidelines. The individual limit will include all ECBs raised, whether in foreign currency or INR.

Individual limit of borrowing

- ECB up to USD 750 million **or equivalent per financial year** irrespective of the category of borrower under automatic route
- Any amount exceeding the above - Approval Route

Currency

- ECB can be raised in any freely convertible foreign currency as well as in Indian Rupees as stipulated

Automatic Route

- No approval required
- Obtain LRN from RBI by filing Form ECB through AD Bank (*earlier Form 83 – has been discontinued*)
- Monthly filings with RBI through AD Bank in Form ECB
- Includes entities under Investigation under FEMA on without prejudice basis

Approval Route

- Prior application to the RBI through AD Bank (Form ECB)
- Reserve Bank has set up an Empowered Committee to consider proposals coming under the Approval Route.
- Recommendation of RBI Empowered Committee (Internal RBI & External Members) for application above certain threshold and final decision by RBI
- Factors: merits, macroeconomic situations and overall guidelines
- Post approval, obtain LRN, monthly filings as under the Automatic Route

Reporting Requirements || Entity not reporting

- **Form ECB:**

- Borrower is required to submit Form ECB in duplicate with AD Bank.
- AD Bank will forward one copy to the Director, Balance of payments statistics division, Department of Statistics and Information Management, RBI.

- **Loan Registration Number:**

- Any draw-down in respect of ECB as well as payment of any fee / charges for ECB should happen only after obtaining LRN from RBI.

- **Changes in terms and conditions of ECB: -**

- Revised Form ECB should be submitted with DSIM within 7 days of such changes

- **Monthly filings:**

- Borrower to submit Form ECB-2 on monthly basis with AD Bank so as to reach to DSIM within 7 days from the close of the month. All filings up to date for past ECB / FCCB before new ECB / FCCB, etc.
- It requires compliance certificate from CS / CA apart from that of AD-Bank.

Form ECB

Agreement Details (To be filled by borrowers of External Commercial Borrowings)				
ECB application	Original		Revised	
Form	FCY ECB		INR ECB	
In case of Revised				
Loan Registration Number allotted				
ECB under	Approval Route		Automatic Route	
Whether requires clearance from any statutory authority? If yes, furnish the name of authority, clearance no. and date.				
Comments/ recommendation of AD bank:				

Comments/
recommendation of AD
bank:

Part A: Borrower details	
Name and address of the Borrower (in BLOCK letters)	Borrower Category (Tick one)
	Public Sector <input type="checkbox"/> Private Sector <input type="checkbox"/>
Registration Number given by the Registrar of Companies: PAN Number of Company: Business Activity:	Detailed Category (Tick one)
	Corporate - Manufacturing <input type="checkbox"/>
	Corporate – Infrastructure <input type="checkbox"/>
	a) Transport <input type="checkbox"/>
	b) Energy <input type="checkbox"/>
	c) Water and Sanitation <input type="checkbox"/>
	d) Communication <input type="checkbox"/>
	e) Social and Commercial Infrastructure <input type="checkbox"/>

Form ECB

Recommendation by AD Bank

We certify that the borrower is our customer and the particulars given in this Form are true and correct to the best of our knowledge and belief. We have scrutinized the application and the original letter of offer from the lender/supplier and documents relating to proposed borrowing and found the same to be in order. This application complies with the extant ECB guidelines and we recommend it for allotment of Loan Registration Number (LRN) by RBI.

Place: _____

(Signature of the Authorised Official with stamp)

Date: _____

Name: _____

Designation: _____

Name of the bank/ branch

AD Code (Part I and Part

II): _____

Tel.No.: _____ Fax No. _____

e-mail: _____

ECB 2

**Reporting of actual transactions of External Commercial Borrowings (ECB)
under Foreign Exchange Management Act, 1999
(for all categories and any amount of loan)
Return for the Month ended of _____.**

1. This return should be filled in for all categories of ECB. It should be submitted within 7 working days from the close of the month through the designated Authorised Dealer to the Director, Department of Statistics and Information Management (DSIM), External Commercial Borrowings Division, Reserve Bank of India, C-9, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051. If there is no transaction during a particular period, a **Nil Return** should be submitted.
2. Please do not leave any column blank. Furnish complete particulars against each item. In case an item is not applicable, write "N.A." against it.
3. All dates should be in format YYYY/MM/DD (e.g., 2012/01/21 for January 21, 2012).
4. Borrowers obtaining sub-loans through DFIs/Banks/NBFCs etc. should not complete this form as the concerned financial institution would directly submit Form ECB-2.
5. The Company Secretary / Chartered Accountant must scrutinise related original documents and ensure that the return is complete and in order as per ECB guidelines issued by Government/RBI, before forwarding it to RBI.
6. Loan Registration Number should be specified for all the loans approved after February 01, 2004. For earlier loans, Loan Identification Number (LIN) / Registration Number allotted by RBI should be specified.
7. If space is not sufficient for giving full information against any item, a separate sheet may be attached to the return and serially numbered as Annex.
8. Add following purpose codes for use in Part C (Utilisation).

Borrowers obtaining sub loan through DFIs/Banks/NBFCs etc. should not complete this form as the concerned financial institution would directly submit Form ECB2

**Reporting of actual transactions of External Commercial Borrowings (ECB)
under Foreign Exchange Management Act, 1999
(for all categories and any amount of loan)
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The Company Secretary / Chartered Accountant must scrutinise related original documents and ensure that the return is complete and in order as per ECB guidelines issued by Government/RBI, before forwarding it to RBI.

FCY ECB (Any freely convertible foreign currency)

- Loans including bank loans
- Floating/ fixed rate notes/bonds/ debentures (other than fully and compulsorily convertible instruments);
- Trade credits beyond 3 years,
- FCCBS
- FCEBS
- Financial Lease

INR ECB

- All instruments listed for FCY ECB
- Plain vanilla Rupee denominated bonds issued overseas,
 - ✓ which can be either placed privately
 - ✓ or listed on exchanges as per host country regulations.

Eligible Borrower

FDI

- Company
- Partnership/Proprietorship
- Limited Liability Partnerships
- Trust not allowed (only in case of AIFs)
- Investment Vehicle
- Start up Companies

Foreign Currency Denominated

- Port Trusts;
- Units in SEZ;
- SIDBI; and
- EXIM Bank of India.

Rupee Denominated

- **Registered entities engaged in micro-finance activities, viz.,**
 - ✓ Registered Not for Profit companies,
 - ✓ registered societies
 - ✓ Registered Trust
 - ✓ cooperatives and
 - ✓ Non-Government Organizations.

FDI

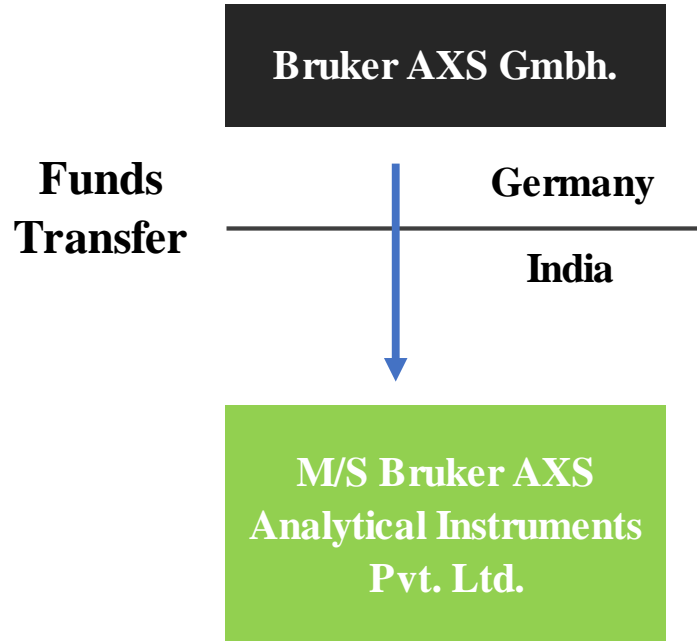
- Company
- Partnership/Proprietorship
- **Limited Liability Partnerships**
- Trust not allowed (only in case of AIFs)
- Investment Vehicle
- Start up Companies

FAQ5

- **Are LLPs eligible to raise ECBs?**
- As LLPs are not eligible to receive FDI, they cannot raise ECBs.

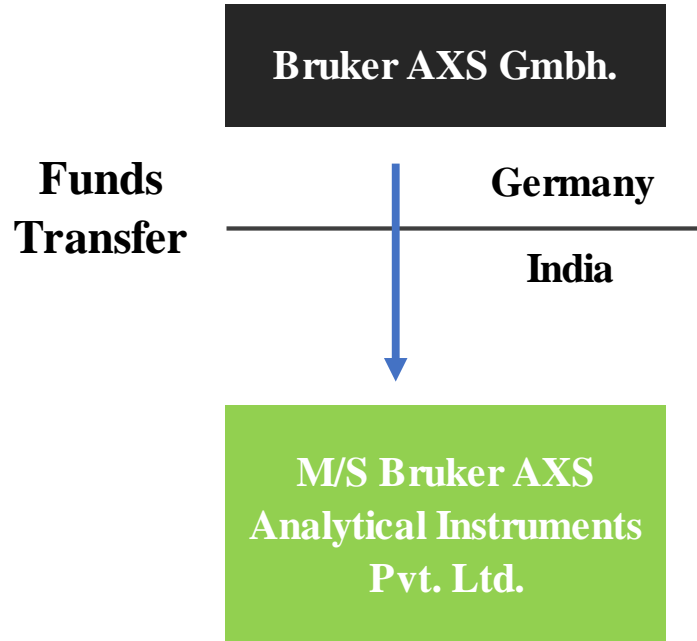
Case Study 1

CA No 3985/2016 - Bruker AXS Analytical Instruments Pvt. Ltd



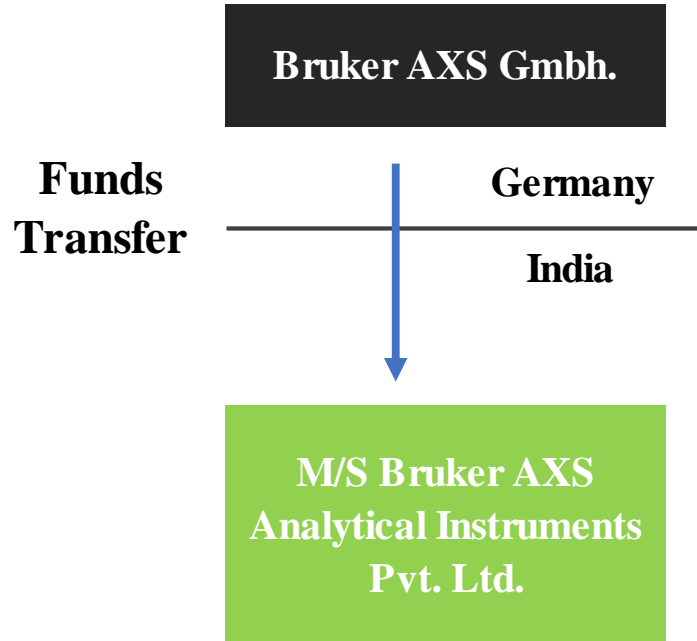
- Bruker AXS GmbH is in Germany and is in the business of designing, manufacture and supply of proprietary life science and material research system and associated products.
- The Applicant (Bruker AXS Analytical Instruments Pvt. Ltd) is incorporated in India as a fully-owned subsidiary of Bruker AXS GmbH in November 2006.
- Applicant obtained certain funds from Bruker AXS GmbH in the form of debt to fulfill its working capital requirement without obtaining the prior approval of Reserve Bank of India.

CA No 3985/2016 - Bruker AXS Analytical Instruments Pvt. Ltd



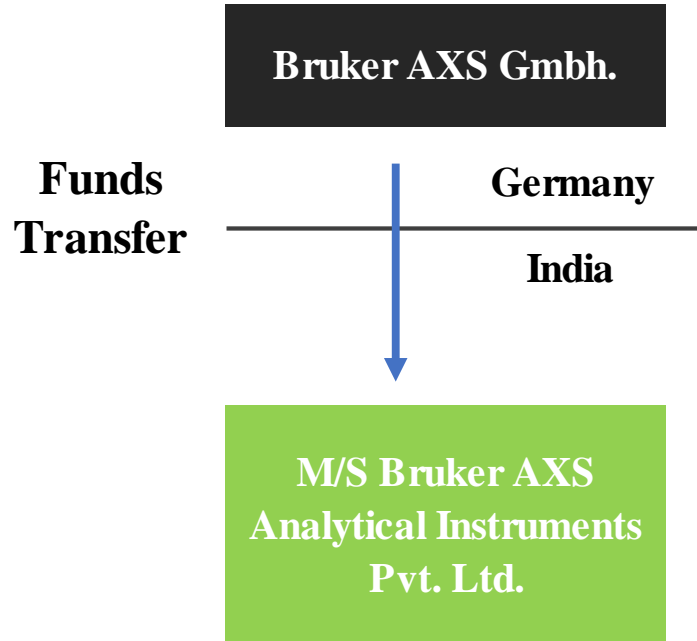
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- Applicant obtained certain funds from Bruker AXS GmbH in the form of debt to fulfill its working capital requirement without obtaining the prior approval of Reserve Bank of India.
- **The remittances were credited to an employee's bank account**

CA No 3985/2016 - Bruker AXS Analytical Instruments Pvt. Ltd



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- Applicant obtained certain funds from Bruker AXS GmbH in the form of debt to fulfill its working capital requirement without obtaining the prior approval of Reserve Bank of India.
- The Indian company was to receive Rs. 29,63,742 in 2008 from Bruker AXS GmbH by way of commission which was adjusted against the Rs 44,00,000 payable by the company to the overseas parent during the financial years 2007-08 and 2008-09.

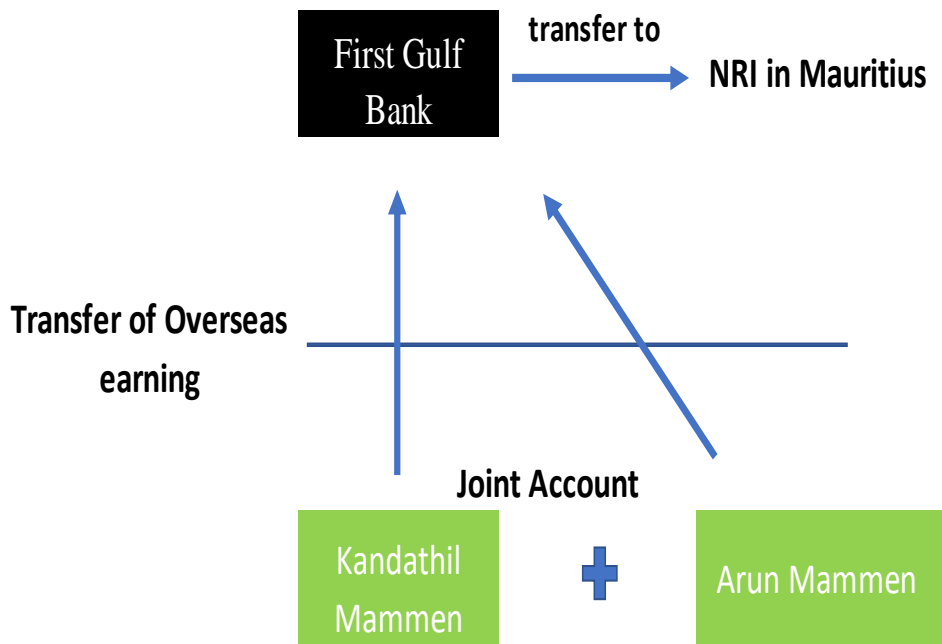
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- The Indian company was to receive Rs. 29,63,742 in 2008 from Bruker AXS GmbH by way of commission which was adjusted against the Rs 44,00,000 payable by the company to the overseas parent during the financial years 2007-08 and 2008-09.
- applicant has contravened Regulation 3 of FEMA 3

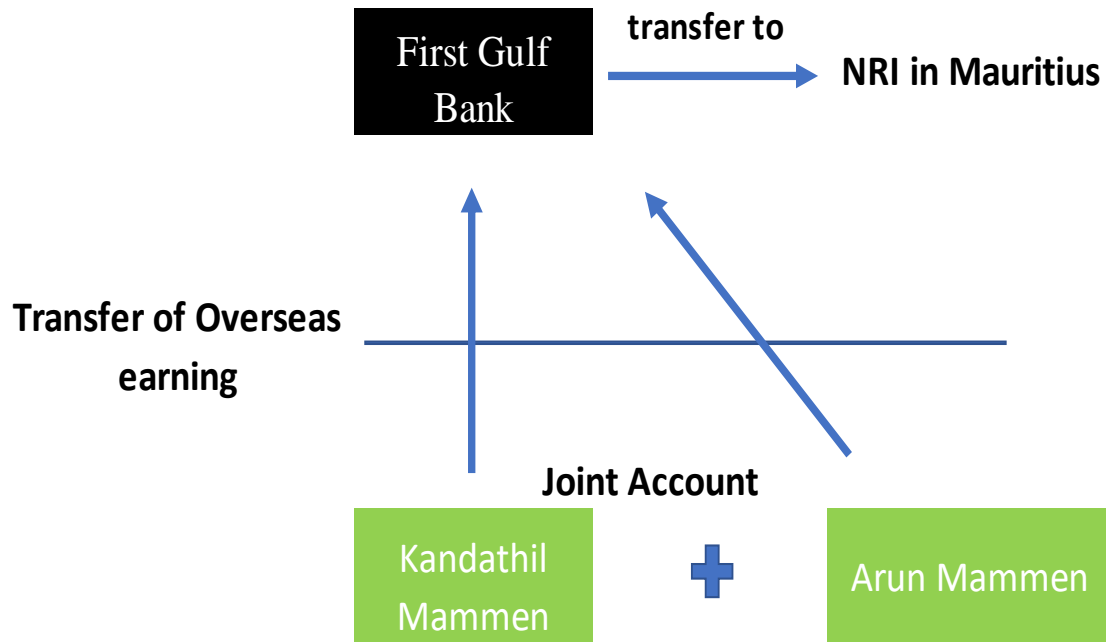
Case Study 2

CA No 3965/2016 ; CA No 3966/2016: Kandathil Mammen.



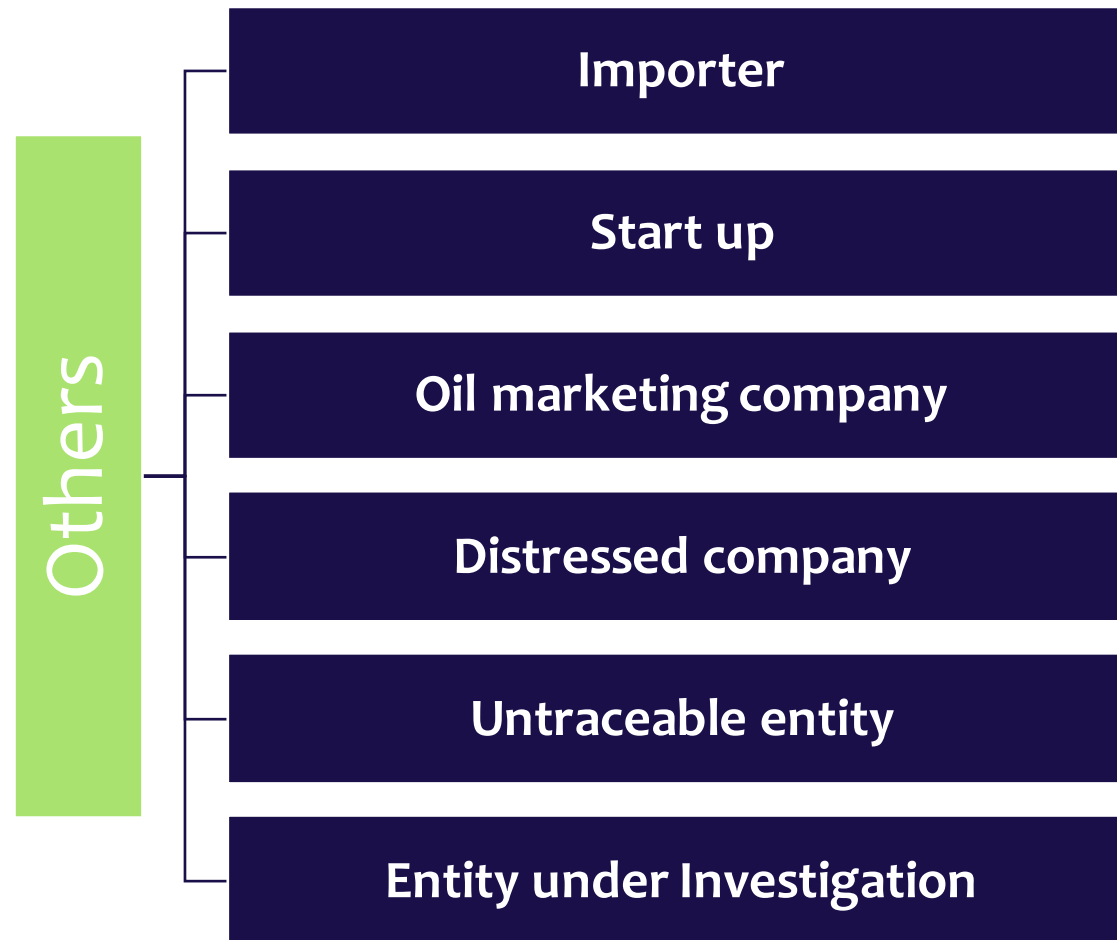
- Applicant, Shri Kandathil Mammen, is an Indian resident and is the Chairman and Managing Director of MRF Limited, India, engaged in the business of rendering consultancy and advisory services outside India, opening Foreign currency accounts and incorporating WOS.
- Applicant and his brother (Arun Mammen) opened a Joint Bank Account in the First Gulf Bank, Dubai for transferring his overseas earning.
- Applicant closed the said account on 10th August, 2014 and lent the entire amount as interest free loan to a third non-resident party, in Mauritius.
- Contravened the provisions of Regulation 3 of FEMA.3/2000-RB dated May 03, 2000 and FEMA.9/2000-RB dated May 03, 2000 for lending money to a person resident outside India and non-repatriation of Foreign Exchange whether due or accrued back to India.

CA No 3965/2016 ; CA No 3966/2016: Kandathil Mammen.

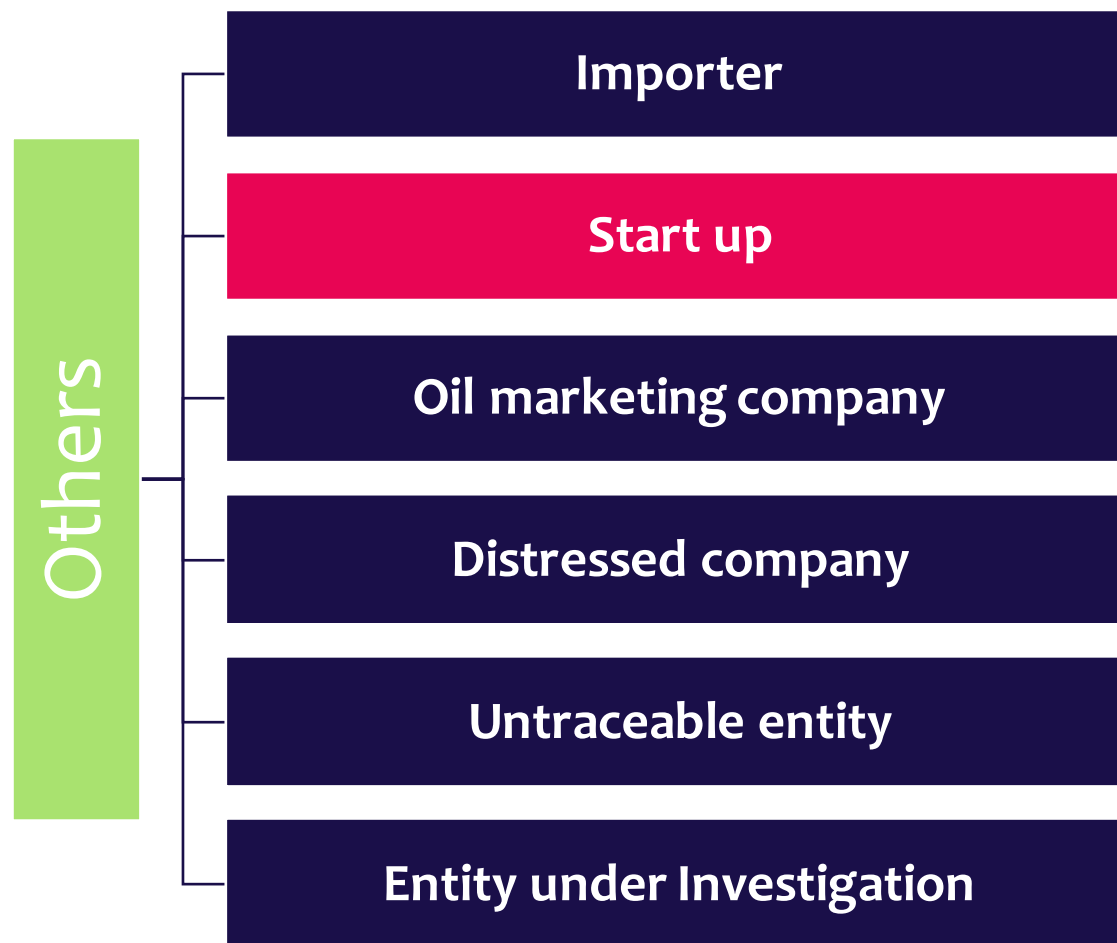


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- Applicant and his brother (Arun Mammen) opened a Joint Bank Account in the First Gulf Bank, Dubai for transferring his overseas earning.
- Applicant did not repatriate the overseas earning to India.
- Non-repatriation of accrued foreign exchange to India, was in contravention
- of Regulation 3 of Notification No. FEMA 9/2000-RB.

Eligible Borrower || Special Dispensation



Eligible Borrower || Special Dispensation



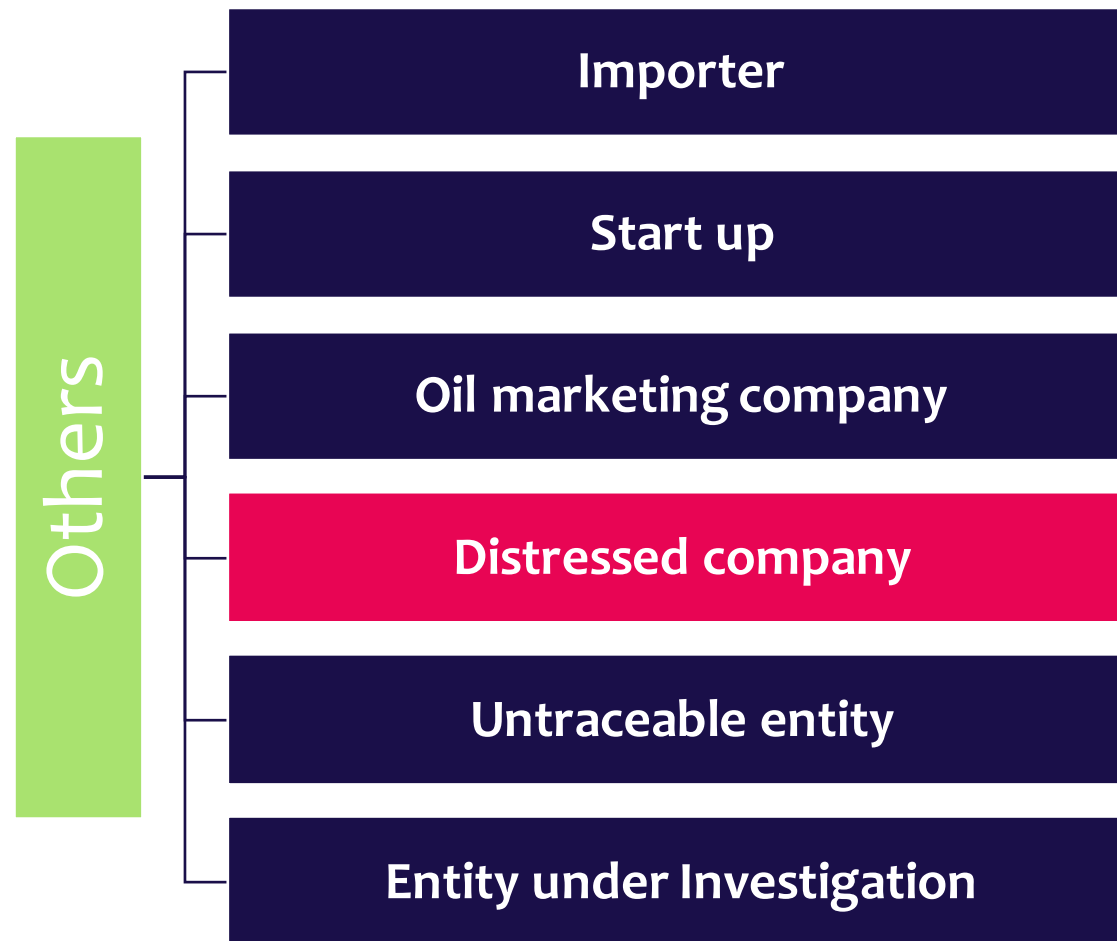
Eligible Borrower || Start ups

- Eligibility: An entity recognised as a Startup by the Central Government as on date of raising ECB.
- Maturity: Minimum average maturity period will be 3 years.
- Recognised lender: Lender / investor shall be a resident of a FATF compliant country.
- Forms: The borrowing can be in form of loans/non-convertible, optionally convertible/partially convertible preference shares.
- Currency: The borrowing should be denominated in any freely convertible currency or INR or a combination thereof.
- Amount: The borrowing per Startup will be limited to USD 3 million or equivalent per financial year.
- All-in-cost: Shall be mutually agreed between the borrower and the lender.
- End uses: For any expenditure in connection with the business of the borrower.
- Conversion into equity: Conversion into equity is freely permitted subject to Regulations for foreign investment in Startups.
- Security: The choice of security to be provided to the lender is left to the borrowing entity.
- Hedging: The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India.
- Conversion rate: In case of borrowing in INR, the currency conversion will be at the market rate as on the date of agreement.
- Other Provisions: Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework.

Eligible Borrower || Start ups

- Eligibility: An entity recognised as a Startup by the Central Government as on date of raising ECB.
- Maturity: Minimum average maturity period will be 3 years.
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- **End uses: For any expenditure in connection with the business of the borrower.**
- Conversion into equity: Conversion into equity is freely permitted subject to Regulations for foreign investment in Startups.
- Security: The choice of security to be provided to the lender is left to the borrowing entity.
- Hedging: The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India.
- Conversion rate: In case of borrowing in INR, the currency conversion will be at the market rate as on the date of agreement.
- Other Provisions: Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework.

Eligible Borrower || Special Dispensation



• ECB for entities 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 participating in the Corporate Insolvency Resolution Process

- **under IBC 2016 as resolution applicants** Eligible Borrowers can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company
- Under Approval Route

• ECB for entities under restructuring

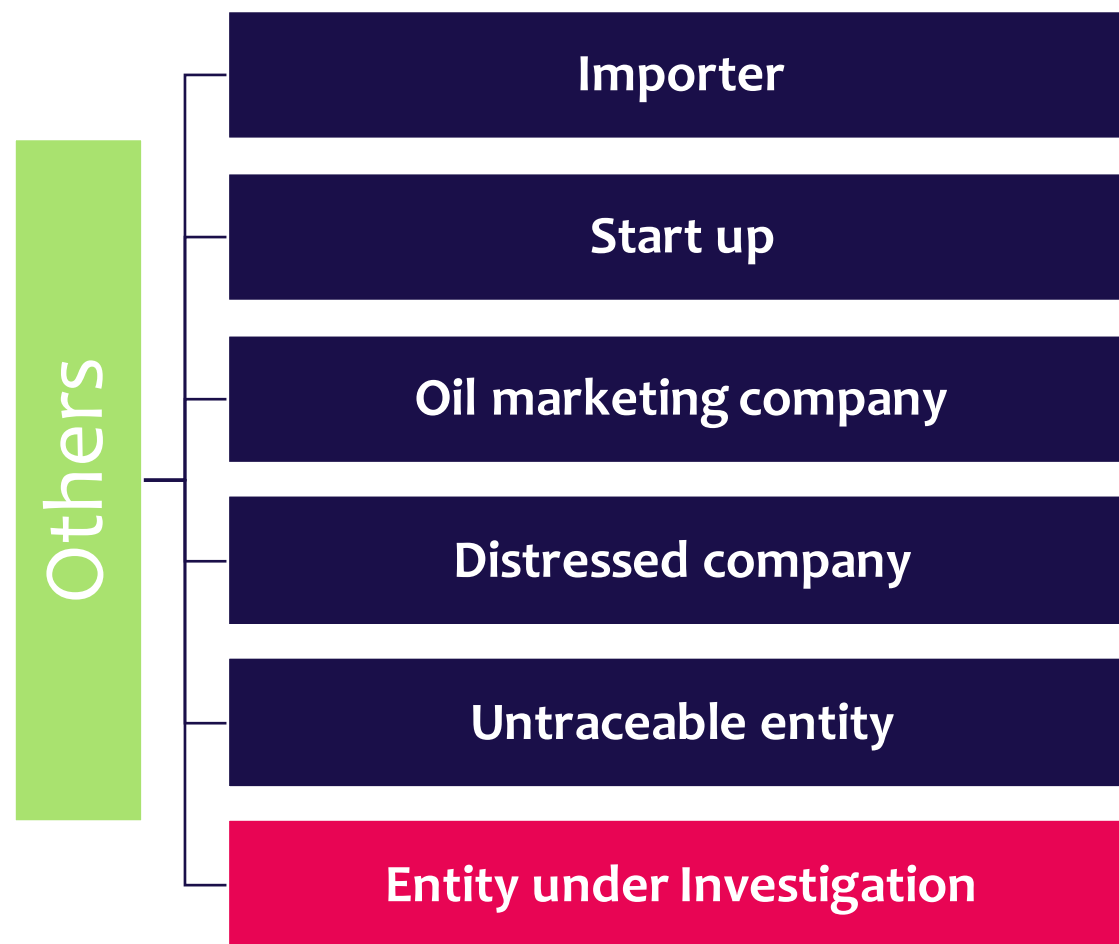
Eligible corporate borrower (SMA2/NPA) in manufacturing/infrastructure sector who have availed INR loan for capital expenditure

- can raise ECB for repayment of such loans under one time settlement with lenders

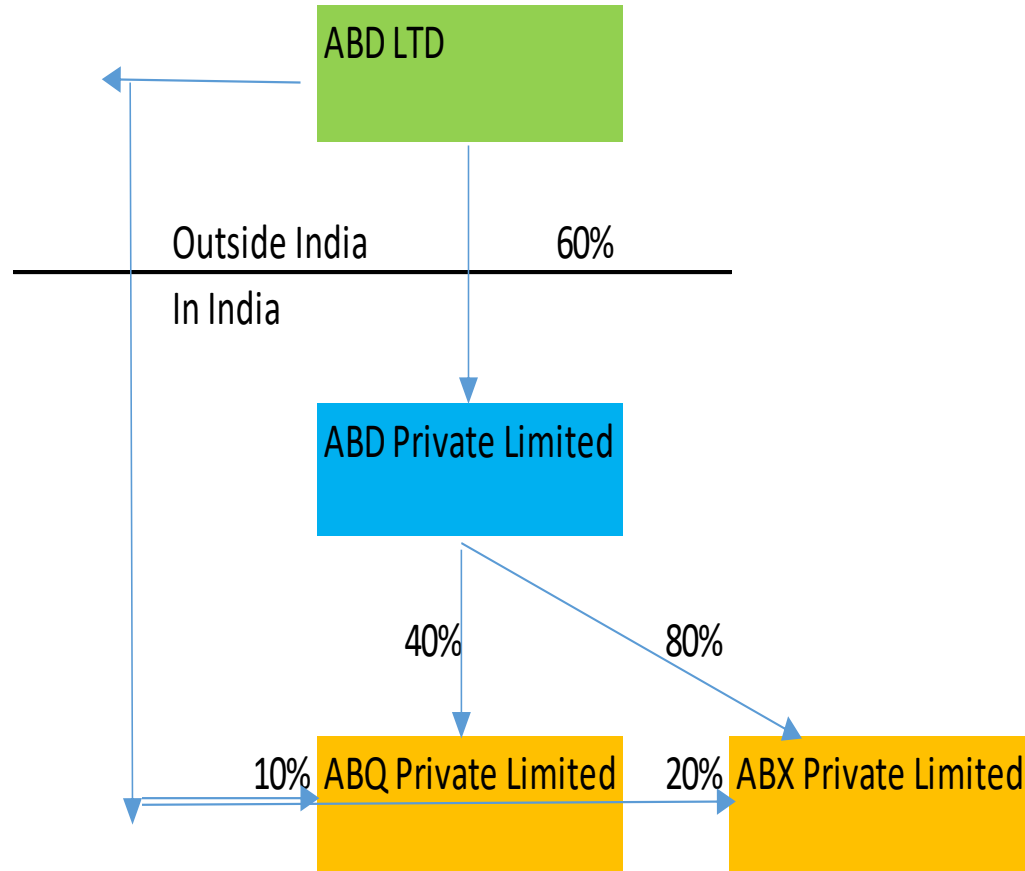
Special provisions for Lender Banks

- Lenders Bank allowed to sell such Loans to ECB Lenders subject to ECB policy
- Other than to Foreign branches/ overseas subsidiaries of Indian banks

Eligible Borrower || Special Dispensation



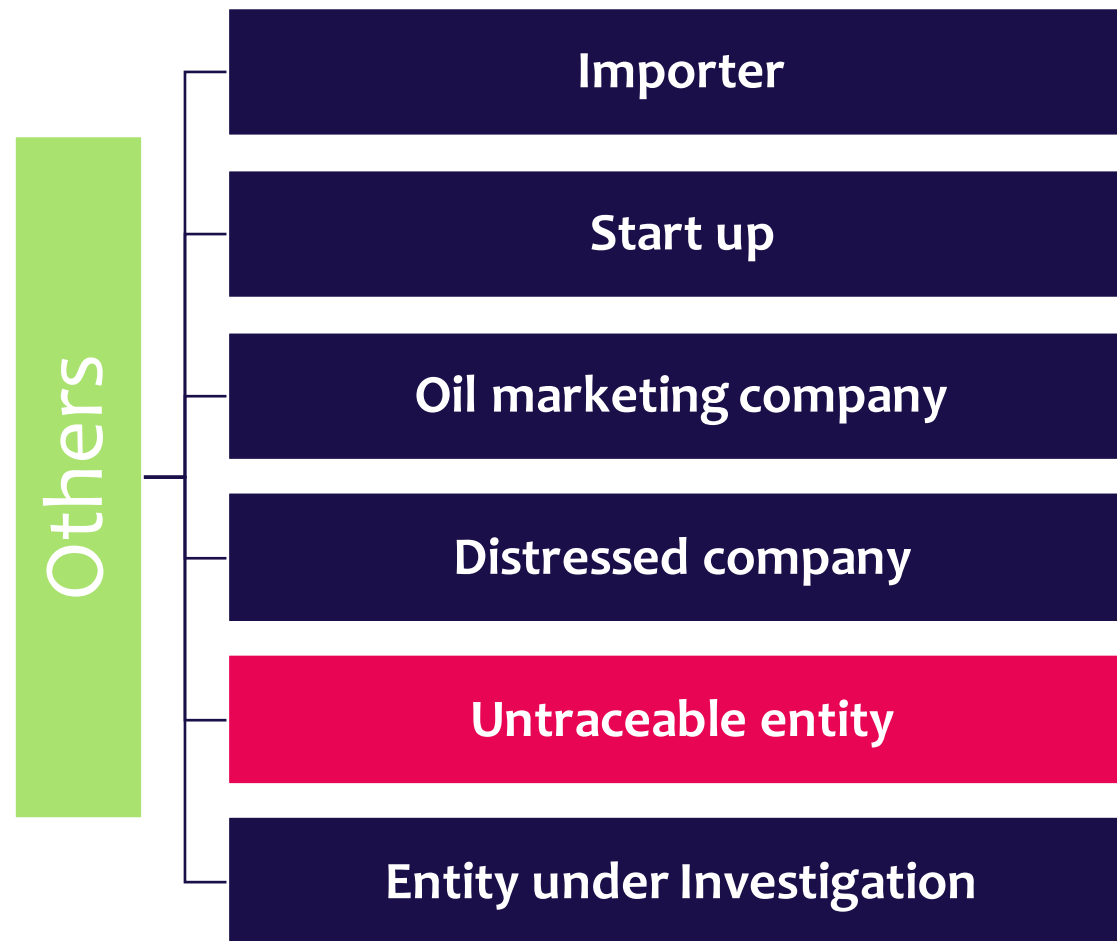
Borrowing by Entities under Investigation



• Borrowing by Entities under Investigation

- All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals.
- The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Category-I bank / RBI as the case may be.
- Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, the AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

Eligible Borrower || Special Dispensation



Reporting Requirements || Entity not reporting

- **Form ECB:**
- Borrower is required to submit Form ECB in duplicate with AD Bank.
- AD Bank will forward one copy to the Director, Balance of payments statistics division, Department of Statistics and Information Management, RBI.

- **Loan Registration Number:**
- Any draw-down in respect of ECB as well as payment of any fee / charges for ECB should happen only after obtaining LRN from RBI.

- **Changes in terms and conditions of ECB: -**
- Revised Form ECB should be submitted with DSIM within 7 days of such changes

- **Monthly filings:**
- Borrower to submit Form ECB-2 on monthly basis with AD Bank so as to reach to DSIM within 7 days from the close of the month. All filings up to date for past ECB / FCCB before new ECB / FCCB, etc.
- It requires compliance certificate from CS / CA apart from that of AD-Bank.

An entity Failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.



SOP has to be followed by designated AD Category-I banks

Untraceable Entity

Not Traceable

- Entity/auditor(s)/directors/promoter(s) of entity are not reachable/reply in negative for a period of not less than two quarters with documented communication/reminders numbering 6 or more;

And fulfills both the following conditions:

- a) Entity not found to be operative at the registered office during the visits by the officials; and
- b) Entities have not submitted Statutory Auditor's Certificate for last two years or more

File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with "UNTRACEABLE ENTITY" written in bold at top.

The outstanding amount will be treated as written-off from external debt liability of the country

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

ED to be informed whenever any entity is designated 'UNTRACEABLE ENTITY', and

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

File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with **"UNTRACEABLE ENTITY"** written in bold at top.

The outstanding amount will be treated as written-off from external debt liability of the country

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

ED to be informed whenever any entity is designated 'UNTRACEABLE ENTITY', and

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Thank You
Your Queries please
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