



# EXTERNAL COMMERCIAL BORROWING GUIDELINES 2023

External Commercial Borrowing (ECB) refers to commercial loans in the form of bank loans and suppliers' credit availed from non-resident lenders. Export credit from official credit agencies within the prescribed terms and conditions will be considered as ECB.

ECB shall be bound by the following conditions:

## 1. ELIGIBLE BORROWERS

Incorporated companies registered under the Companies Act of Bhutan, but excluding financial institutions, individuals, trusts, NGOs and co-operatives shall be termed eligible borrowers.

## 2. PROCEDURE FOR APPROVAL

ECB can be raised either under the approval route or under the automatic route. Under the approval route, borrowers may apply to the Ministry of Finance (MoF) for their intention to engage in ECB. There shall be an ECB Committee comprising representatives from Royal Monetary Authority (RMA), Ministry of Industry, Commerce and Employment (MoICE), and MoF to review and recommend the proposal to MoF.

ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework. For raising ECB through an automatic route, the entity may approach an authorized bank in Bhutan with its proposal and duly filled form based on criteria as approved by the government and RMA. The ECBs raised under the automatic route must be reported to the ECB Committee and RMA by the authorized bank as prescribed by RMA. Under the aforesaid framework, all eligible borrowers can raise ECB through the automatic route<sup>1</sup> based on the criteria prescribed by the RMA.

## 3. FOREIGN EXCHANGE CONDITION

Borrower should have the capacity to earn the currency of borrowing and meet its repayment obligations, except when applying for BTN-linked loans from multilateral credit institutions. Under BTN-linked loans borrowers shall not be required to have the capacity to earn in the currency of borrowings as their repayment liability is fixed in BTN. At the time of loan disbursement, the domestic borrower has the right to convert USD into BTN. The RMA will allow domestic borrowers to convert BTN back to USD at the time of repayments (principal and interest) as per the repayment schedule.

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<sup>1</sup> Automatic route becomes effective as of January 1 2024



#### 4. RECOGNIZED LENDERS

ECB can be from the following foreign sources:

- a) Commercial banks;
- b) Export credit agencies;
- c) Suppliers credit;
- d) Export/Import banks;
- e) Multilateral financial institutions (such as IFC, ADB, World Bank, etc.); and
- f) International capital markets

#### 5. OTHER LENDERS

ECB can also be raised from:

- a) Foreign shareholder(s) of companies licensed by the MoICE with proper repayment schedule; and
- b) Registered Foundations that have been in existence for at least 5 years (such as Bill & Melinda Gates Foundation, Skoll Foundation, David & Lucile Packard Foundation, etc.).

#### 6. AMOUNT

The maximum amount of ECB which can be raised by eligible borrowers should be within the borrower's debt-equity ratio of 3: 1. For calculation of the debt-equity ratio all existing and the debt contracted under ECB, whether domestic or ECB, must be considered.

ECB raised from the foreign shareholder's not exceeding all-in-cost ceilings of 200 basis points (bps) above Alternate Reference Rate (ARR) shall not be accounted for in debt-to equity ratio and treated for regulation purposes as equity (FDI).

#### 7. ALL-IN-COST CEILINGS

The all-in-cost ceiling refers to the maximum interest and other costs that may be incurred by the borrower in relation to the ECBs. All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Ngultrums, but excludes fees and penalties which are contingent on specific situations, including repatriation if borrowers default. The all-in-cost ceilings for ECB must not be more than 600 bp above 6 months LIBOR. This will be reviewed from time to time as per the response from lenders.

#### 8. END-USE AND MATURITY

Raising of ECB shall be permitted for capital expenditure and working capital under the following conditions:

- a) Capital expenditures;
- b) Working capital:
  - (i) If ECB is raised from shareholder(s) for working capital within all-in-cost ceilings of 200 basis points (bps) above ARR, the minimum maturity shall be 3 years.



- (ii) For all other ECB cases, the minimum maturity for ECB raised for working capital purposes shall be 5 years.

Raising ECB is not permitted for the following purposes:

- a) On-lending or investment in capital market;
- b) Investing in real estate sector (with certain exclusions, such as buildings which are part of an infrastructure project or energy-efficient, climate-resilient buildings should be allowed in specific cases);
- c) Acquisition of land;
- d) Repayment of existing domestic loans;
- e) Expansion, and change in activity/category without prior approval of the MoICE.

## **9. GUARANTEES**

- a) There shall be no Sovereign Guarantee.
- b) Financial institutions in Bhutan may extend guarantees to eligible borrowers for projects that have the capacity to earn the currency in which ECB is raised and meet its debt repayment obligations, but within the prudential norms of the Royal Monetary Authority

## **10. SECURITY**

The choice of security to be provided to the lender/supplier shall be left to the borrower. Creation of charge on assets will have to be as per the Companies Act of Bhutan. Creation of charge over immovable assets in favor of the overseas lender will be governed by the laws of the Kingdom.

## **11. PARKING OF PROCEEDS**

Borrowers will remit all proceeds of ECB to Bhutan in line with Foreign Exchange Rules and Regulations 2018 and amendment thereto.

## **12. PREPAYMENT**

Prepayment of ECB would be permitted upon fulfilling the following conditions:

- a) if met out of the inflow of foreign equity or if the net foreign currency earning of the borrower is sufficient to cover the prepayment;
- b) maximum of USD 5 million per loan (ECB) or as per approval of RMA; and
- c) an exception to this is prepayment on breach of any loan covenant - in which case entire loan outstanding would be permitted.

For (a) and (b), application for prepayment must be submitted between two to six months in advance to the intended prepayment date.

## **13. REFINANCING OF AN EXISTING ECB**



In case the new ECB is raised at a lower all-in-cost and maintaining the outstanding maturity period of the original ECB, the loan will be registered with the ECB Committee without the need for a new approval. For other terms, the approval process will be simplified compared to raising a new ECB and processed within a week.

#### **14. DEBT SERVICING**

The remittances of installments of principal, interest, and other charges shall be routed through the banking system in line with Foreign Exchange Rules and Regulations (FERR) 2018 and amendment thereto. All the repayments must be based on the net balancing principal (financed out of the net foreign currency earnings of the borrower) with an exception to BTN-Linked loan as provided in Clause 3.

#### **15. CONVERSION INTO EQUITY**

- a) Conversion of ECB into equity will be permitted subject to the following conditions:
  - (i) The activity of the company is covered under the RGoB's FDI Policy;
  - (ii) The foreign equity holding after such conversion remains within the specified FDI limit; and
  - (iii) Pricing of shares are as per the Stock Exchange Guidelines/Regulations in the case of listed companies.
- b) The conversion must be reported to the RMA.

#### **16. TAXATION**

Taxes on interest payments on ECB will be as per the Tax laws of Bhutan.

#### **17. REPORTING**

- a) A copy of the loan agreement must be submitted to the RMA.
- b) Borrowers will be required to submit monthly foreign currency inflow and outflow to the RMA in the prescribed format.

#### **18. MONITORING**

- a) The RMA shall monitor and maintain information on foreign exchange related issues.
- b) The MoICE shall monitor compliance to FDI Policy and other trade regulations.
- c) MoF to report on the status of ECB to the Government.

The Guidelines shall be revised from time to time in keeping with the developments within the Country and in the international financial market.