



## RECENT AMENDMENTS UNDER FOREIGN EXCHANGE MANAGEMENT ACT 1999

The Reserve Bank of India (RBI) has issued/updated the Master Directions recently (March 2019) in relation to the

1. Establishment of Branch / Liaison / Project Office – in case of the Defence, Telecom, Private Security and Information and Broadcasting sectors
2. External Commercial Borrowings
3. Foreign Direct Investment (FDI) – in relation to E-Commerce entity under Market Place Model

This Newsletter captures the updates on the same:

**I. Master Direction on Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities updated up to 29<sup>th</sup> March 2019 (originally issued on 1<sup>st</sup> January 2016) [“MD on BO/LO/PO”]:**

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/06MDE170516F633150EBCFE438084174F7DECCDC20C.PDF>

Following are the brief of changes updated under the MD on BO/LO/PO:

- Prior approval from the RBI is not required where the necessary Government approval or license/permission by the concerned Ministry/ Regulator has already been granted for opening of a BO/LO/PO or any other place of business in India, in case the principal business of the applicant falls in the Defence, Telecom, Private Security and Information and Broadcasting sector.
- If non-resident applicant has been awarded a contract by/entered into an agreement with the Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings then no separate reference or approval of Government of India is required for opening a PO relating to defence sector.

**II. Master Direction on External Commercial Borrowings (ECB), Trade Credits and Structured Obligations [Issued on 26<sup>th</sup> March 2019] [“MD on ECB”]:**

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/5MD2603201979CA1390E9E546869B2A9A92614DEDBF.PDF>

Following are the brief of changes updated under the MD on ECB:

- Erstwhile four-tiered structure is being replaced with “Foreign Currency denominated ECB” (earlier Tracks I and II) and “Rupee Denominated ECB” (earlier Track III and Rupee Denominated Bonds).
- All entities eligible to receive Foreign Direct Investment can now avail the ECB. The list of eligible borrowers is being widened.
- Resident Entity of a country which is a Financial Action Task Force (FATF) or International Organization of Securities Commissions (IOSCO) compliant will be treated as a recognized lender.
- The minimum average maturity period (MAMP) is 3 years except the manufacturing sector companies, which may raise ECBs with MAMP of 1 year up to USD 50 million or its equivalent per financial year.
- All eligible borrowers can now raise ECBs up to USD 750 million or equivalent per financial year under the automatic route thereby removed the former sectoral cap.
- Late submission fee for delay in reporting under the MD on ECB is being introduced. to obviate the need for compounding these contraventions.
- **Standard Operating Procedure (SOP) for Untraceable Entities is being introduced** where the Authorised Dealer(AD) Bank is authorised to take action in case of untraceable entities who are found to be in contravention of reporting provisions for ECBs by failing to submit prescribed return(s) under the MD on ECB, either physically or electronically, for past eight quarters or more.  
Untraceable Entity is a borrower, if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ Six reminders or more and which fulfils the conditions mentioned in the MD on ECB.
- Resolution Applicant under the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 is recognised as Eligible borrower and who can avail the ECB under Approval Route provided the Resolution Plan permits specifically.
- Introduced the Structured Obligations in cases where Non-resident guarantee for domestic fund based and non-fund based facilities.

**III. Master Direction on Foreign Investment in India updated up to 8<sup>th</sup> March 2019 (“MD on FDI”):**

[https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD11\\_04012018B4D0DB4E6DA04CC4B7AF62AA03D902BE.PDF](https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD11_04012018B4D0DB4E6DA04CC4B7AF62AA03D902BE.PDF)

MD on FDI has increased the level of compliance for E-Commerce Entity which are under Marketplace model, viz.,

- E-commerce entity providing a marketplace cannot exercise ownership or control over the inventory i.e. goods purported to be sold.
- Entity having control on its inventory bring e-commerce marketplace entity or its group companies is not permitted to sell its products on the platform run by such marketplace entity.
- Marketplace E-Commerce entity cannot influence the sale price of any goods or services.
- E-commerce marketplace entity should not mandate any seller to sell any of their product exclusively on its platform.

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