

**External  
Commercial  
Borrowings  
&  
Trade  
Credits**



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# External Commercial Borrowings (ECB) and Trade Credits





- External Commercial Borrowings
- Structured obligations
- Take out Finance
- Trade credits





# CONCEPT

ECB refer to cross border commercial loans

(bank loans, buyers' credit, suppliers' credit, securitized instruments)

availed by **permitted eligible borrowers** from **permitted non-resident lenders** with **minimum average maturity** of 3 years.



# ROUTE FOR AVAILING ECB

- ⦿ Automatic Route i.e. no Reserve Bank of India (RBI) approval is required (however registration is required)
- ⦿ Approval Route i.e. RBI approval is required.
- ⦿ ECB for investment in industrial sector, infrastructure sector and specified service sectors such as Hotel, Hospital and Software sector is included under Automatic Route.

# Automatic Route



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# ELIGIBLE BORROWERS

- ◉ Corporates including those in hotel, hospital, software, Infrastructure Finance Companies registered under the Companies Act.
- ◉ SEZ units - for their own requirement. Cannot transfer or onlend ECB funds to sister concerns or DTA units
- ◉ NGO's engaged in microfinance activity - subject to satisfying the requirements specified by RBI
- ◉ NBFC- Infrastructure Finance Companies(IFCs), Asset Finance Companies(AFC)
- ◉ Micro Finance Institutions (MFIs) engaged in micro finance activities.
- ◉ Corporate in the service sector viz hotels, hospitals and software sector
- ◉ Holding companies/ Core Investment companies coming under RBI for infrastructure project in SPV





# ELIGIBLE BORROWERS

## Entities that are excluded:

- ◉ Financial intermediaries such as banks, financial institutions (FIs), housing finance companies and NBFCs.
- ◉ Individual, Trusts and Non Profit making organizations



# ELIGIBLE LENDERS

## International Recognized Sources:

- ◉ International Banks
- ◉ International Capital Markets
- ◉ Multilateral Financial Institutions(such as IFC, ADB, CDC etc.)
- ◉ Export Credit Agencies
- ◉ Suppliers of Equipment
- ◉ Foreign Collaborator
- ◉ Foreign Equity Holder (other than OCB)



# ELIGIBLE LENDERS

Foreign Equity Holder require minimum paid up equity in the borrower company:

- ◉ ECB upto 5 Million - 25% held directly by the Lender
- ◉ ECB more than 5 Million - 25% held directly by the lender and debt equity ration not exceeding 4:1



# AMOUNT

Entity	Maximum amount of ECB per financial year
Corporates	USD 750 Million
Corporates in hotel, hospital and software service sector	USD 200 Million
NGO's in Microfinance activity	USD 10 Million
Infrastructure Finance Companies	75% of their Owned funds
SIDBI	50% of their Owned funds





# MATURITY

Amount	Minimum Average Maturity
USD 20 Million	3 year
> USD 20 Million up to USD 750 Million	5 years
ECB upto USD 20 million can have call/put option provided <u>minimum average maturity</u> is complied with	





# ALL-IN-COST CEILINGS

Average Maturity Period	All in Cost ceiling over 6 months LIBOR*
3 years upto 5 years	350 basis points
More than 5 years	500 basis points
* For the respective currency of borrowing or applicable benchmark	



# ALL-IN-COST CEILINGS

Included	Excluded
Rate of Interest, other fee and expenses in foreign currency	Commitment fee, pre-payment fee, fee payable in Indian currency, withholding taxes





# PERMITTED END-USE

For investment such as import of capital goods, new projects, modernization/ expansion of existing production units) in real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector and specific service sector in India.

Infrastructure sector is defined as (i) power, (ii) telecommunications, (iii) railways, (iv) road including bridges, (v) sea port and airports, (vi) industrial parks and (vii) urban infrastructure (water supply, sanitation and sewage projects).

ODI in JV/WOS abroad



# PERMITTED END-USE

First stage as well as subsequent stages of acquisition of shares in the disinvestment process under GOIs disinvestment program of PSU shares.

Payment for spectrum Allocation.

For lending to self help groups or for micro credit by NGO's

IFC's can avail ECBs only for on-lending to the infrastructure sector as defined under the ECB policy,.

AFCs can avail of ECBs only for financing the import of infrastructure equipment for leasing to infrastructure projects.

Maintenance and operations of toll systems for roads and highways for capital expenditure provided they form part of the original project



# PROHIBITED END-USE

- Working capital
- General corporate purpose
- Repayment of existing Rupee loans
- On lending
- Investment in capital market or acquiring a company in India( including investment in SPV or Money Market Mutual Funds)
- Real Estate



# GUARANTEES / SECURITY

## Guarantee

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) from India relating to ECB is not permitted.

## Security

The choice of security to be provided to the lender is left to the borrower. However, creation of charge over immovable assets and financial securities - can be done only after obtaining 'no objection' from Authorized Dealer bank. In case of enforcement - property will be transferred only to person resident in India.





# GUARANTEES / SECURITY

Pledge of shares by promoters, domestic associate companies of the borrower

Corporate Guarantee

Personal Guarantee

possible only after obtaining no objection certificate from AD bank.



## PREPAYMENT & REFINANCING

### ◉ Prepayment

Up to USD 500 million - subject to compliance with the minimum average maturity as applicable to the Loan.

### ◉ Refinancing

Possible with the fresh ECB subject to the condition that the fresh ECB is raised at a lower all-in-cost ceiling and outstanding maturity of the original ECB is maintained.



# PARKING OF ECB PROCEEDS OVERSEAS

Borrowers are permitted to either keep ECB proceeds either overseas or to remit these funds to India, pending utilization for permissible end-uses.

ECB proceeds parked overseas can be invested in the following liquid assets

- (a) Deposits or Certificate of Deposit;
- (b) Treasury bills and other monetary instruments of one year maturity ;
- (c) Deposits with overseas branches / subsidiaries of Indian banks abroad.



## CONVERSION OF ECB INTO EQUITY

Conversion of ECB into equity is permitted subject to the following conditions:

- The activity of the company is covered under the Automatic Route for FDI or FIPB approval for foreign equity participation has been obtained by the company, whichever applicable,
- The foreign equity holding after such conversion of debt into equity is within the sectoral cap, if any,
- Pricing of shares is as per the SEBI and RBI guidelines as may be applicable for listed / unlisted companies.



# CONVERSION OF ECB INTO EQUITY

## Full conversion

- Form FC-GPR with the Regional Office concerned of the RBI along and form ECB-2 submitted to DSIR RBI **within seven working days** from the close of month to which it relates.
- The words "ECB wholly converted to equity" should be clearly indicated on top of the ECB-2 form. Once reported, filing of ECB-2 in the subsequent months is not necessary.



# CONVERSION OF ECB INTO EQUITY

## Partial Conversion

- Converted portion of ECB should be reported in form FC-GPR to the Regional Office concerned and form ECB-2 clearly differentiating the converted portion from the unconverted portion.
- The words "ECB partially converted to equity" should be indicated on top of the ECB-2 form. In subsequent months, the outstanding portion of ECB should be reported in ECB-2 form to DSIM.



# Approval Route





# ELIGIBLE BORROWERS

- ◉ On lending by the EXIM Bank for specific purposes will be considered on a case by case basis
- ◉ Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government are also permitted to the extent of their investment in the package and assessment by Reserve Bank based on prudential norms
- ◉ NBFCs with minimum average maturity of 5 years from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects.
- ◉ IFC's and AFC's beyond 75% of their owned funds.
- ◉ Corporates in the service sectors can avail ECBs beyond USD 200 million or equivalent per financial year.
- ◉ SIDBI beyond 50% of their owned funds.



# ELIGIBLE BORROWERS

- ◉ FCCBs by housing finance companies satisfying the criteria prescribed - minimum net worth of Rs. 500 Crore, listing on BSE / NSE, Minimum size of FCCB - 100 Million.
- ◉ SPV - set up to finance infrastructure companies / projects exclusively.
- ◉ Multi-State Co-operative Societies engaged in manufacturing activity
- ◉ SEZ developers can avail of ECBs for providing infrastructure facilities within SEZ.
- ◉ Corporates which have violated the extant ECB policy and are under investigation by Reserve Bank and / or Directorate of Enforcement.
- ◉ Cases falling outside the purview of the automatic route limits and maturity period



# AMOUNT AND MATURITY

- ◉ Corporates in the service sector viz hotels, hospitals, software sector and miscellaneous services are allowed to avail of ECB beyond USD 200 million under the approval route during a financial year.
- ◉ Borrowers other than corporates in the service sector are allowed to avail of ECB beyond USD 750 million under the approval route during a financial year
- ◉ The proceeds of ECBs should not be used for acquisition of land.



# ELIGIBLE LENDERS

- ◉ International Recognized Sources:
- ◉ International Banks
- ◉ International Capital Markets
- ◉ Multilateral Financial Institutions (such as IFC, ADB, CDC etc.)
- ◉ Export Credit Agencies
- ◉ Suppliers of Equipment
- ◉ Foreign Collaborator
- ◉ Foreign Equity Holder (other than OCB)





# GUARANTEES

- ◉ Applications for providing guarantee/standby letter of credit or letter of comfort by banks, financial institutions relating to ECB in the case of SME.
- ◉ ECB by textile companies for modernization or expansion of textile units.





## Procedure and Compliance



# PROCEDURE

- ◉ Execute a Loan Agreement with the overseas lender. However, Loan agreement is not required to be filed
- ◉ Prepare and file form 83 for obtaining Loan Registration Number (LRN) in duplicate, certified by the Chartered Accountant to the Authorized Dealer.

AD will process the application and forward the one copy to Department of statistics and information system, RBI for generating LRN.

First draw down should be only after obtaining LRN.



# COMPLIANCE

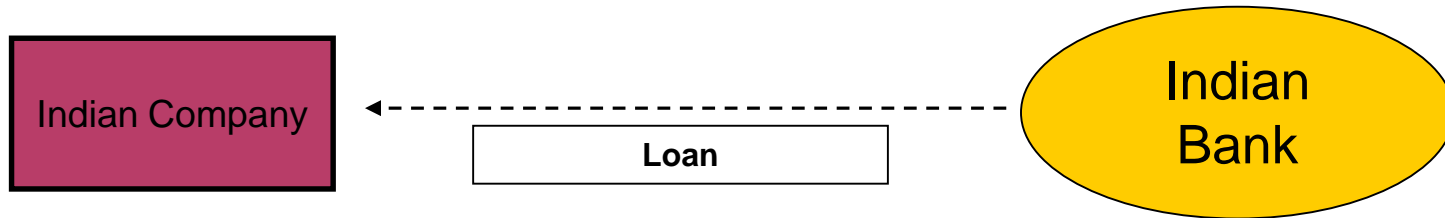
- ⦿ ECB-2 Return certified by the designated AD bank needs to be submitted on monthly basis so that it can reach RBI within seven working days from the close of month to which it relates
- ⦿ Primary responsibility to ensure that ECB raised / utilized is in conformity with the ECB guidelines is of the borrower concerned and any contravention of the ECB guidelines invite penal action under FEMA 1999

# ◉ Structured Obligations



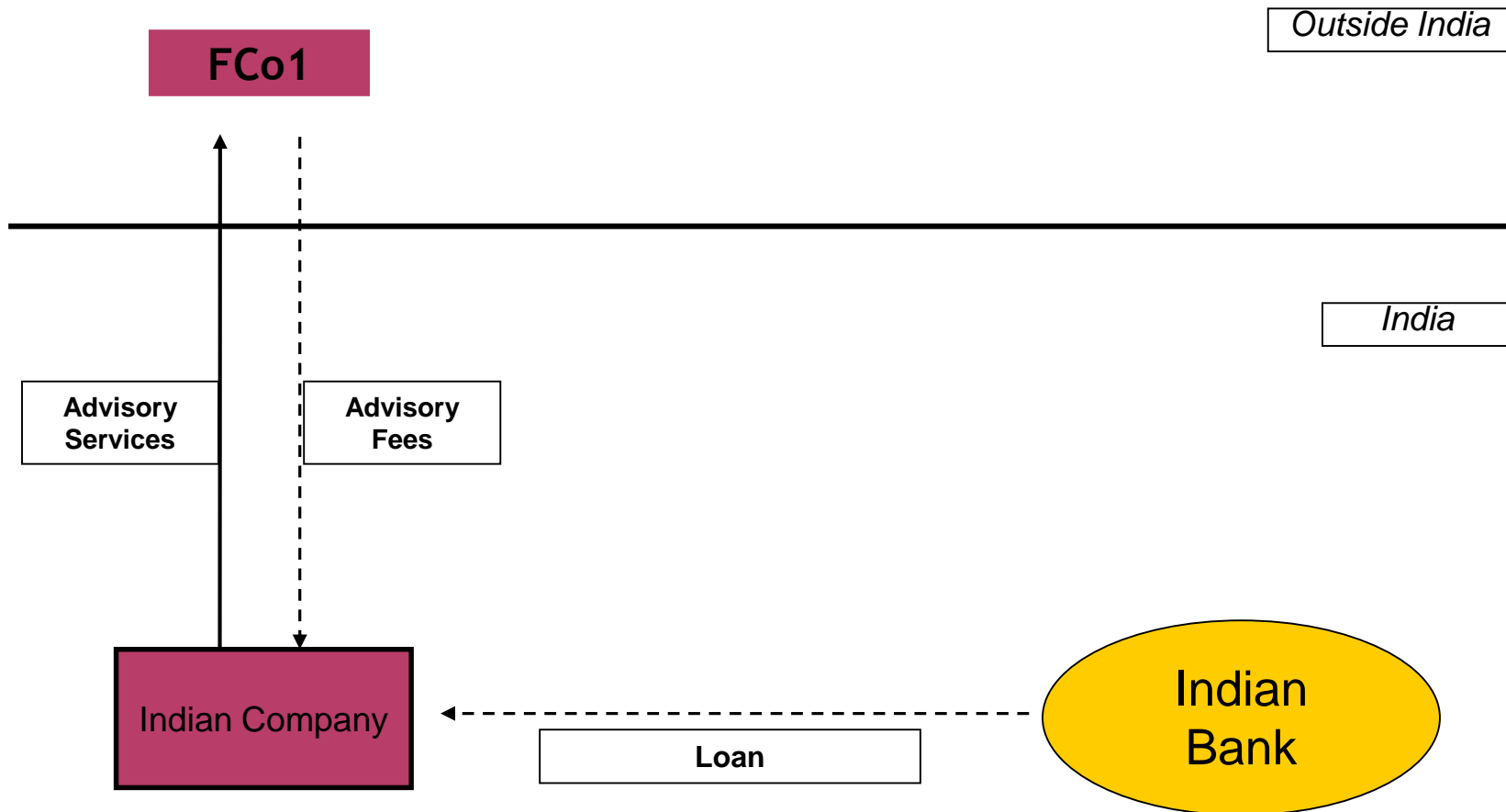


# STRUCTURED OBLIGATION





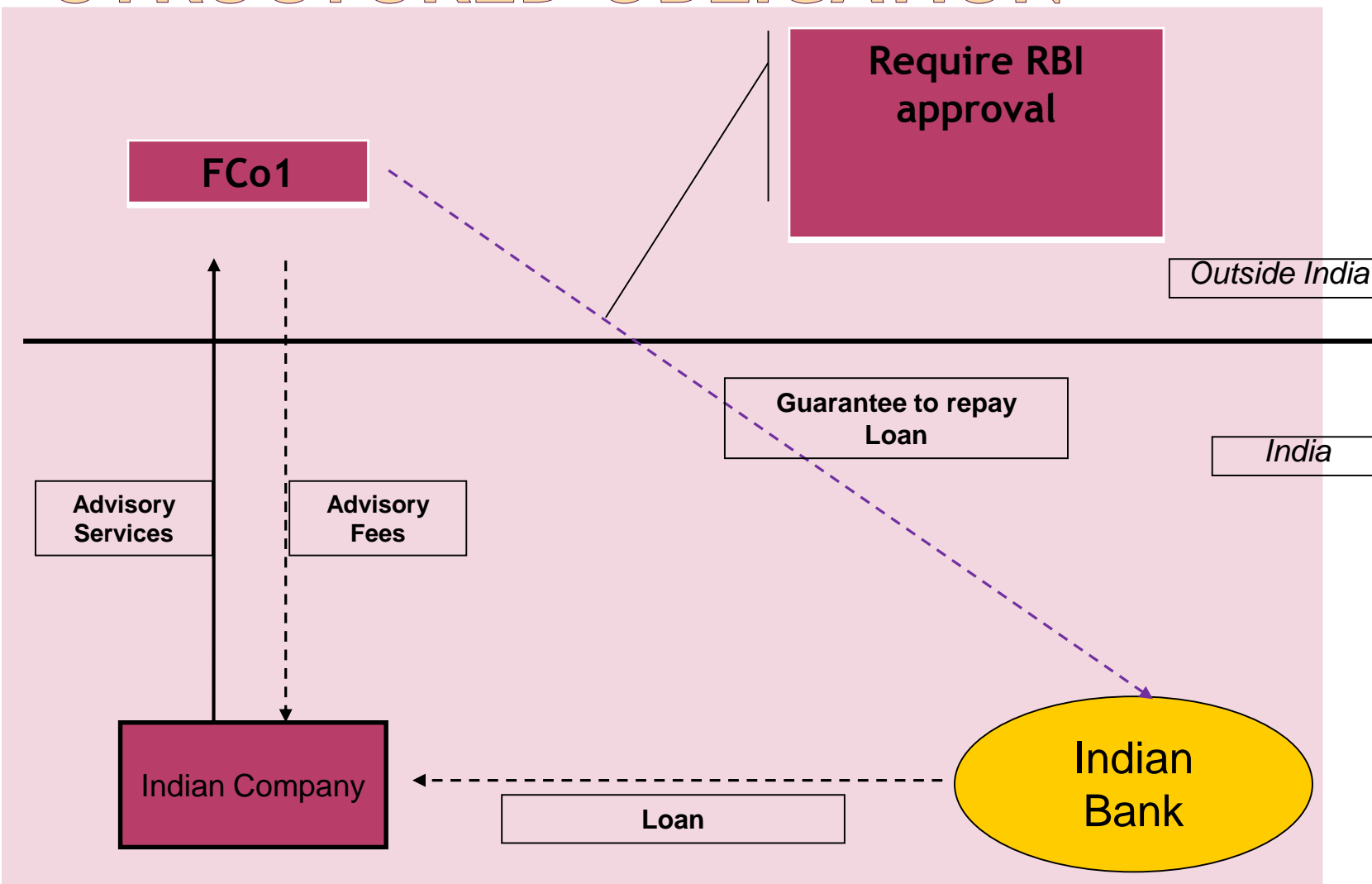
# STRUCTURED OBLIGATION





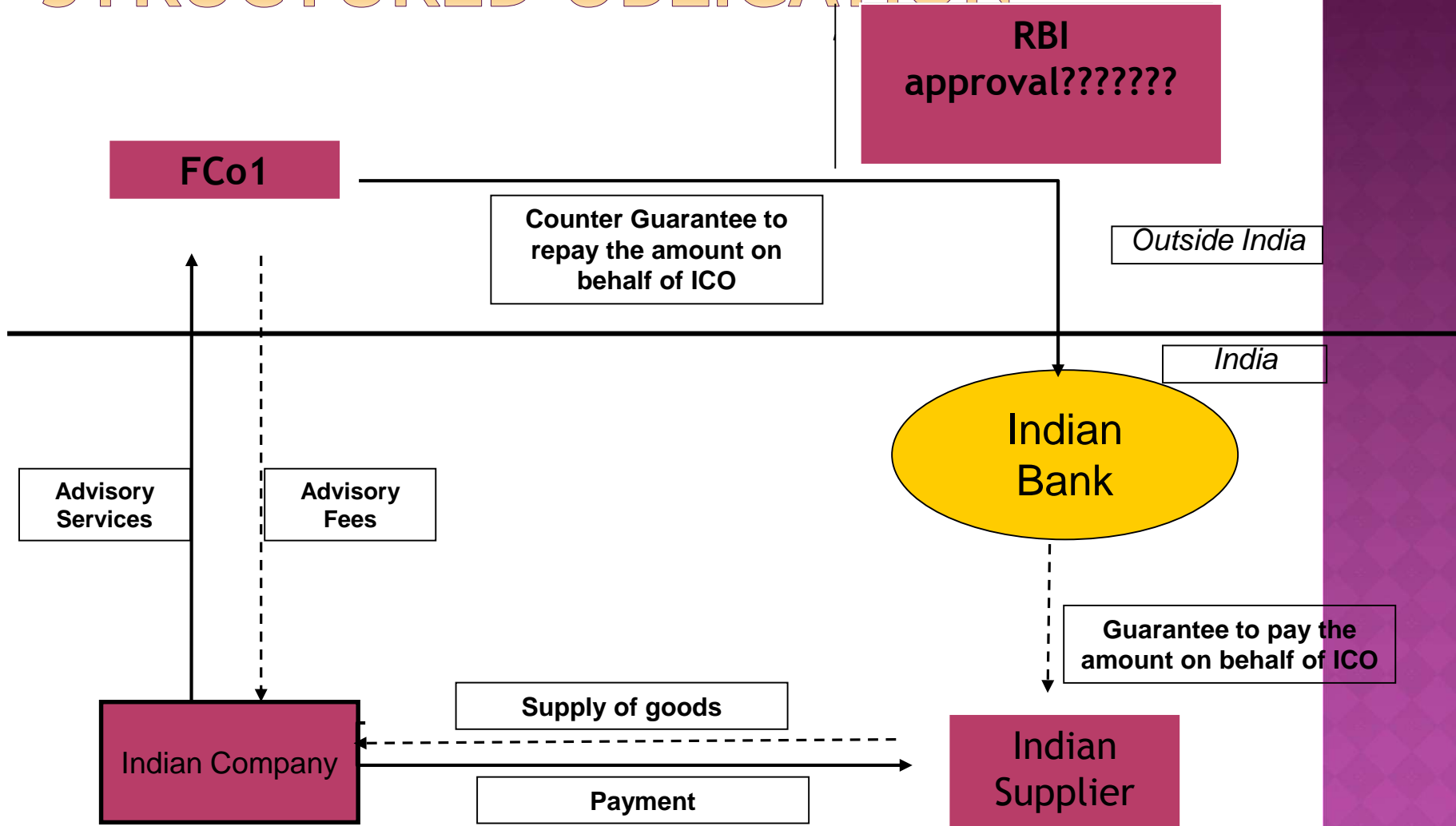


# STRUCTURED OBLIGATION





# STRUCTURED OBLIGATION





- Other Instruments that require Compliance with ECB norms



# PREFERENCE SHARES / DEBENTURES

- ◉ Non convertible, optionally convertible or partially convertible preference shares.
- ◉ Foreign Currency Convertible Bonds (FCCB) issued in accordance with the “Issue of FCCB and ordinary shares (through Depository mechanism scheme, 1993”.
- ◉ Foreign Currency Exchangeable Bond (FCEB) issued in accordance with “Issue of FCEB Scheme 2008”



# TAKE OUT FINANCE

Permitted for refinancing of existing Rupee loans availed from the domestic banks by eligible borrowers in the **sea port and airport, roads including bridges and power sectors** for the development of new projects under approval route, subject to the following conditions:

- Execution of tripartite agreement with domestic banks and overseas recognized lenders
- Minimum average maturity period of seven years.
- Fee payable to the overseas lender should not exceed 100 bps per annum.



# TAKE OUT FINANCE

- On take-out, the residual loan would be considered as ECB and would be designated in a convertible foreign currency.
- Domestic banks / Financial Institutions are not permitted to guarantee the take-out finance.
- Domestic bank not permitted to carry any obligation on its balance sheet after the occurrence of the take-out event.
- Compliance with the ECB Policy.





# TRADE CREDITS

## Definition

- ◉ Credits extended for imports directly by the overseas supplier, bank and financial institution for maturity of less than three years. Trade credits include suppliers' credit or buyers' credit.
- ◉ Buyers' credit and suppliers' credit for three years and above come under the category of External Commercial Borrowings (ECB) which are governed by ECB guidelines.



# AMOUNT AND MATURITY

Transaction	Amount permitted per import transaction	Maturity Period
Import transaction for imports permissible under the current Foreign Trade Policy of the DGFT	USD 20 Million	One year or less
Import of capital goods as classified by DGFT	USD 20 Million	Up to 5 years with abinitio contract period of 6 months



# ALL-IN-COST CEILINGS

Average Maturity Period	All in Cost ceiling over 6 months LIBOR*
Upto One year	350 basis points
More than one year but less than three years	
More than three year but less than five years	
The all-in-cost ceilings include arranger fee, upfront fee, management fee, handling/ processing charges, out of pocket and legal expenses, if any	



# GUARANTEES

AD banks permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution up to USD 20 million for

- Up to one year for import of all non-capital goods permissible under FTP (except gold, palladium, platinum, Radium, silver etc.) and
- Up to three years for import of capital goods.

⦿The period of guarantees has to be co-terminus with the period of credit, reckoned from the date of shipment.



# Thank You