KHAITAN &CO
Advocates since 1911

R&I India Flash Report

PROPOSED RBI AMENDMENTS

8 February 2019

The Reserve Bank of India ("**RBI**") issued a statement on 7 February 2019 containing certain proposed regulatory policy measures for the deepening of the financial markets in India. The RBI has indicated that it proposes to amend the current regulations governing external commercial borrowings ("**ECB**") by Indian companies ("**ECB Regulations**") and investments by foreign portfolio investors ("**FPIs**") in corporate debt. The key highlights for international debt funds are set out below.

Key highlights

Of the changes announced, two are of particular relevance to international funds.

Firstly, the RBI has indicated its intention to remove the end-use restrictions under ECB Regulations on repayment and on-lending for repayment of domestic Rupee loans for resolution applicants under Insolvency and Bankruptcy Code, 2016 ("**IBC**") to allow them to raise ECB for repayment of the target's domestic loan. RBI proposes to issue guidelines for this by end-February. When considered together with the changes notified by the RBI on 16 January 2019 ("**January RBI Notification**"), the combined effect of these changes (once the RBI publishes its implementing circular by end-February) is that international funds will be able to directly refinance the loans of companies that are subject to the corporate insolvency resolution process ("**CIRP**") and benefit from security in that regard.

Secondly, the RBI has indicated its intention to remove the restriction on FPIs investing more than 20% of their corporate bond portfolio in a single corporate group. RBI proposes to issue a circular to this effect by mid-February.

Takeaways

- *New "route in", but some issues remain:* The ability of international lenders to refinance the rupee debt of Indian companies undergoing the corporate insolvency process creates access to a previously restricted segment of the Indian market. Given that such ECB lenders should be able to directly benefit from Indian security, this is a positive step and international funds may wish to consider actively assessing refinancing opportunities. However, a few issues remain:
  - The cap on the all-in-cost of debt remains, so the ability to freely price risk in such a refinancing still remains an issue.

- This flexibility only exists for companies in insolvency and does not cover pre-insolvency restructurings, where there is also a significant need for the refinancing of existing debt.

- The January RBI Notification stated that an entity under *"restructuring scheme/corporate insolvency resolution process"* can only raise ECBs if specifically permitted under the resolution plan. This is an incremental issue to bear in mind, unless the RBI does away with this requirement.

- Also, the January RBI Notification sets out certain parameters for ECB refinancing of previous ECB loans. Although those conditions ought not to apply here (as the regulatory requirements for ECB and domestic loans differ), it remains to be seen whether the RBI imposes any conditions with regard to the ECB refinancing of domestic loans when it issues its circular.

FPI easing welcome, but funds will still need to syndicate exposure: The RBI's intention to remove the 20% single name concentration limit is a welcome move and one that will facilitate greater participation by new FPIs and remove the disadvantages new funds previously faced by not having an existing portfolio (the six-month "*phasing in*" period provided to new FPIs by the RBI was not considered to be enough to allow for diversification down to 20%). FPIs cannot hold more than 50% of any debt raise, so they will need to syndicate their exposure, although this issue was perceived as being less problematic than the 20% restriction.

AUTHORS: Nikhil Narayanan and Shruti Singh

R&I India is published by the firm's Restructuring & Insolvency practice group. For further information regarding this publication please do not hesitate to contact restructuring.insolvency@khaitanco.com or any of the following partners who are members of the R&I practice group: https://www.khaitanco.com/rigroup.aspx

For private circulation only

The contents of this document are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the personal views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2019 Khaitan & Co. All rights reserved

Bengaluru
Simal, 2nd Floor
7/1 Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
F: +91 80 2559 7452
E: bengaluru@khaitanco.com

Kolkata
Emerald House
1B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
F: +91 33 2248 7656
E: kolkata@khaitanco.com

Mumbai
One Indiabulls Centre
13th Floor, Tower 1
841 Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
F: +91 22 6636 5050
E: mumbai@khaitanco.com

New Delhi
Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
F: +91 11 4151 5318
E: delhi@khaitanco.com