

# EXTERNAL COMMERCIAL BORROWINGS

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# ECB - OVERVIEW

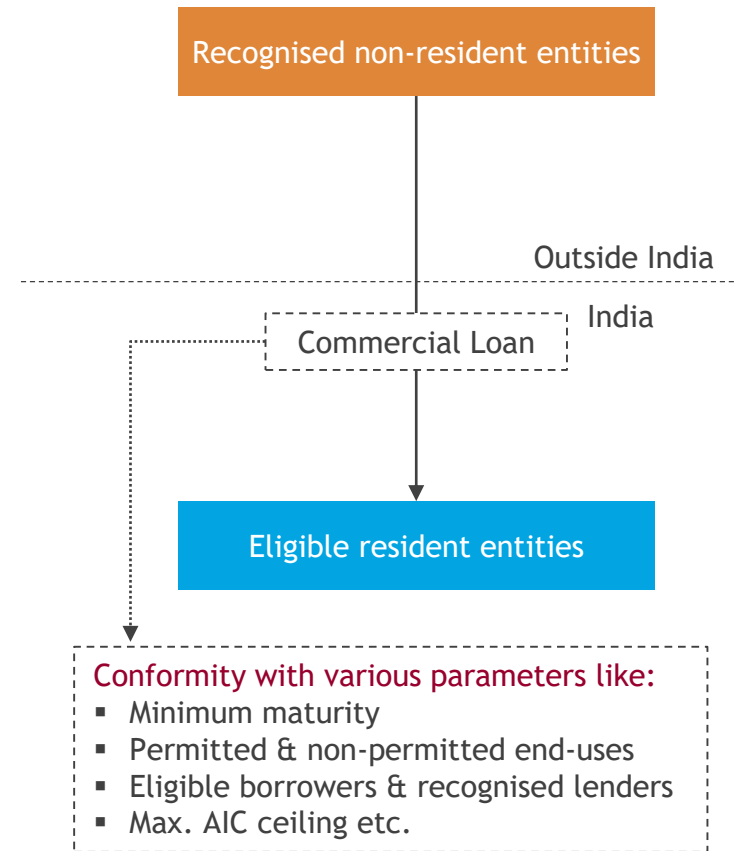
# ECB - OVERVIEW

## MEANING

### Definition

ECBs are commercial loans raised by eligible resident entities from recognized non-resident entities

It should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum AIC ceiling, etc



# ECB - OVERVIEW

## ECB FRAMEWORK

### Track I

- ▶ Medium term foreign currency denominated ECB
- ▶ Min. avg maturity of 3/5 years

### Track II

- ▶ Long term foreign currency denominated ECB
- ▶ Min. avg maturity of 10 years

### Track III

- ▶ INR denominated ECB
- ▶ Min. avg maturity of 3/5 years

## FORMS OF ECB

Loans including bank loans

Securitized instruments

Buyers' credit

Suppliers' credit

FCCBs

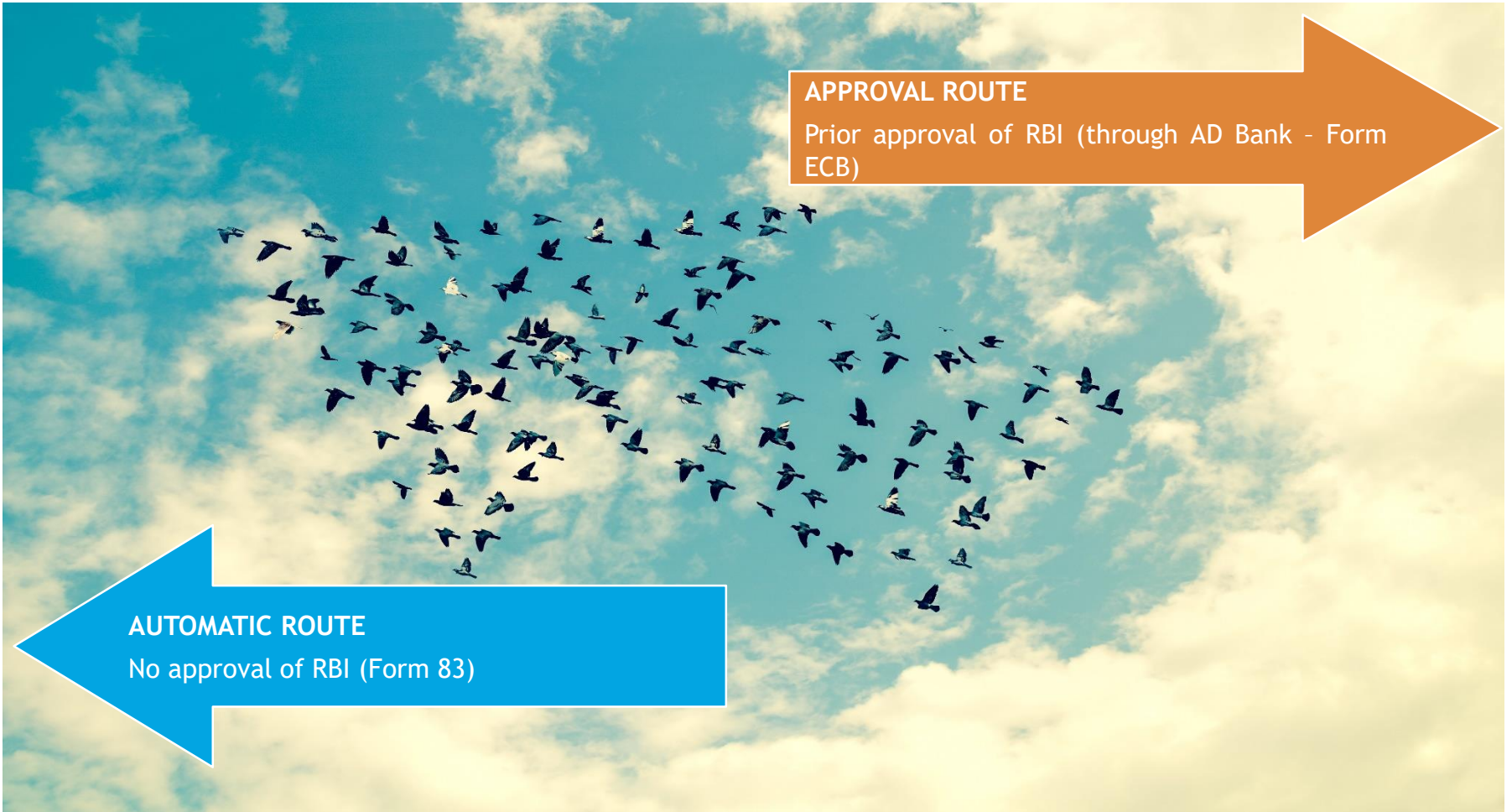
Financial Lease

FCEBs

ECB framework is not applicable to investment in NCDs in India by RFPIs

# ECB - OVERVIEW

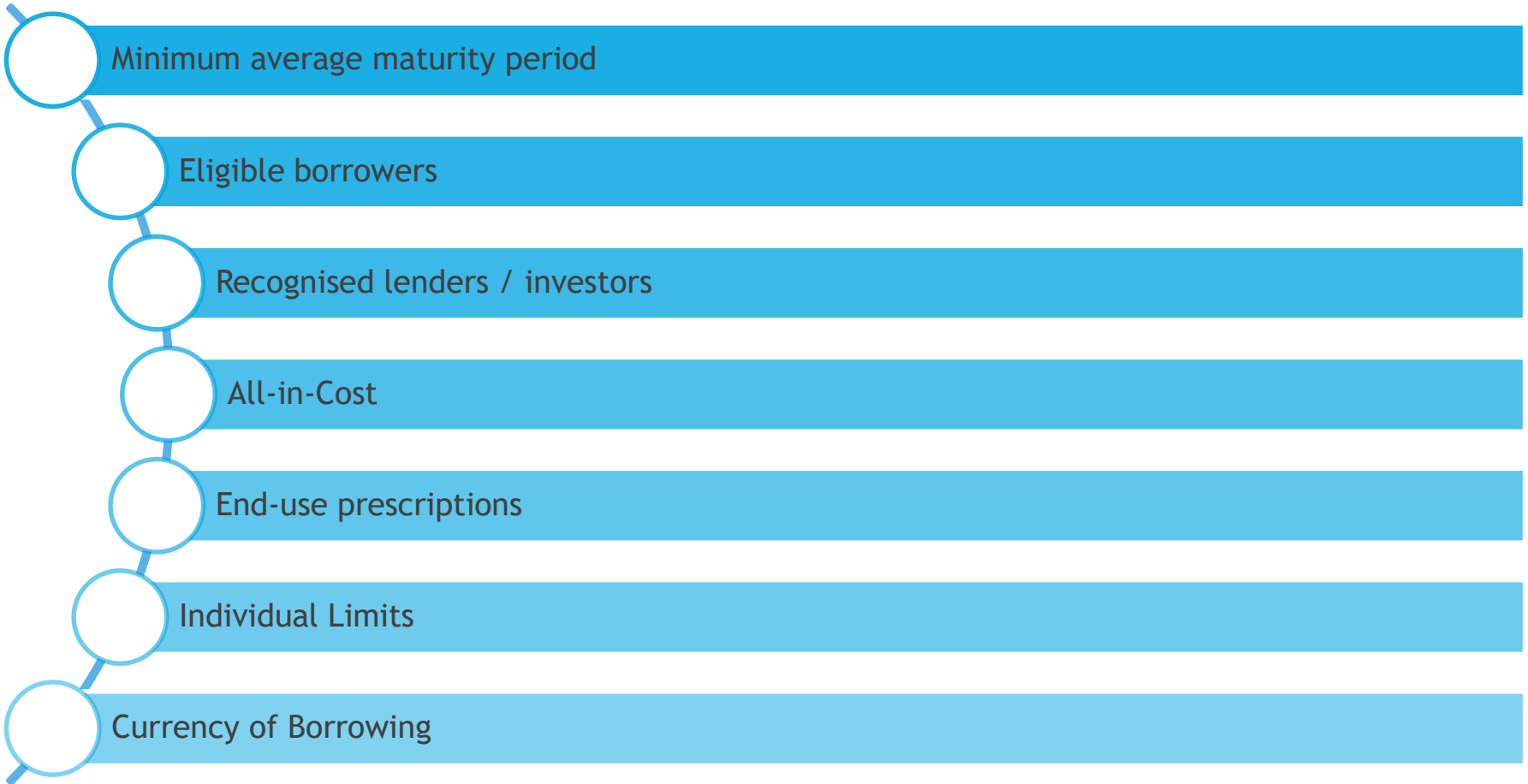
## ENTRY ROUTES





# PARAMETERS FOR ECB

# PARAMETERS FOR ECB





# MINIMUM AVERAGE MATURITY PERIOD

Tracks	Particulars	Min. Avg. Maturity Period
Track I	Upto USD 50 mn or its equivalent	3 years
	Beyond USD 50 mn or its equivalent	5 years
	Companies in Infrastructure sector, NBFC-IFCs, NBFC-AFCs, Holding Companies, CICs	5 years
	FCCBs and FCEBs	5 years
Track II	Any amount	10 years
Track III	Same as Track I	

# ELIGIBLE BORROWERS

## Track I

- ▶ Companies in manufacturing and software development sectors
- ▶ Shipping and airlines companies
- ▶ SIDBI
- ▶ Units in SEZs
- ▶ Exim Bank (only under the approval route)
- ▶ Companies in infrastructure sector, NBFCs-IFCs, NBFC-AFCs, Holding Companies and CICs

## Track II

- ▶ All entities listed under Track I
- ▶ REITs and INVITs under the framework of SEBI

## Track III

- ▶ All entities listed under Track II
- ▶ NBFCs under the framework of RBI
- ▶ NBFCs-MFIs, Registered NPOs, Societies, Trusts, Co-operatives, NGOs engaged in micro finance activities
- ▶ Companies engaged in miscellaneous services
- ▶ Developers of SEZs / NMIZs

- Start Ups (as recognized by Central Government) eligible to raise ECB, irrespective of business activity
  - LLPs raising ECB?

# RECOGNISED LENDERS / INVESTORS

## Track I

- ▶ International Banks
- ▶ International capital markets
- ▶ Multilateral / Regional / Government owned financial institutions
- ▶ Export credit agencies
- ▶ Suppliers of equipment
- ▶ Foreign Equity Holders\*
- ▶ Overseas long term investors
- ▶ Overseas branches / subsidiaries of Indian banks

\*\*Foreign Equity Holder' :

- (a) Minimum 25% direct equity holding by the lender in the borrowing entity
- (b) Minimum indirect equity holding of 51%, and
- (c) Group company with common overseas parent

## Track II

- ▶ All entities listed under Track I except overseas branches / subsidiaries of Indian banks

## Track III

- ▶ All entities listed under Track I except overseas branches / subsidiaries of Indian banks
- ▶ For NBFCs-MFIs, other eligible MFIs, NPOs and NGOs, ECB can be availed from overseas organisations and individuals subject to conditions





# ALL-IN-COST

## Track I

- ▶ ECB with 3 to 5 years min. avg. maturity - 300 bps p.a. over 6 month LIBOR or applicable benchmark
- ▶ ECB with above 5 years min. avg. maturity - 450 bps p.a. over 6 month LIBOR or applicable benchmark
- ▶ Penal interest, if any - upto 2% over and above the contracted rate of interest

## Track II

- ▶ Maximum spread over the benchmark will be 500 bps p.a.
- ▶ Remaining conditions same as under Track I

## Track III

- ▶ It should be in line with the market conditions

# END-USE PRESCRIPTIONS

## TRACK I

### Capital Expenditure

- ▶ Import of capital goods and related payment towards import of services, technical know-how and license fees
- ▶ New Projects
- ▶ Modernization / expansion of existing units
- ▶ Local sourcing of capital goods
- ▶ Payment of capital goods already imported but unpaid
- ▶ Refinancing of existing trade credit for import of capital goods
- ▶ ODI in JVs/ WOS
- ▶ Acquisition of shares of PSU under disinvestment program
- ▶ Refinancing of existing ECB provided residual maturity is not reduced

### Special cases

- ▶ SIDBI: Only on-lending to borrowers in MSME sector
- ▶ Units of SEZs: For their own requirements
- ▶ Shipping and airlines companies: For import of vessels and aircrafts respectively
- ▶ General corporate purpose only from direct/indirect equity holder or group company for min. avg. maturity of 5 years
- ▶ NBFC-IFCs and NBFC-AFCs - only for financing infrastructure
- ▶ Holding Companies and CIC - only for on-lending to infrastructure SPVs

### Under Approval Route:

- ▶ Import of second hand goods as per DGFT Guidelines
- ▶ On-lending by Exim bank

# END-USE PRESCRIPTIONS

## TRACK II

For all purposes excluding:

- ▶ Real estate activities
- ▶ Investing in capital market
- ▶ Using proceeds for equity investment domestically
- ▶ On-lending to other entities with any of the above objectives
- ▶ Purchase of land

## TRACK III

- ▶ NBFCs:
  - On-lending to the infrastructure sector
  - Providing hypothecated loans to domestic entities for acquisition of capital goods / equipments
  - Providing capital goods/equipment to domestic entities by way of lease and hire-purchases
- ▶ For Developers of SEZs/ NMIZs:
  - Only for providing infrastructure facilities within SEZ/NMIZ
- ▶ For NBFCs-MFI, other eligible MFIs, NGOs and registered NPOs:
  - For on-lending to SHGs
  - For micro-credit
  - For micro finance activity including capacity building
- ▶ For all other eligible entities, same end uses as mentioned under Track II

# LIMITS & CURRENCY

Eligible entities can raise ECB up to following maximum limit - AUTOMATIC ROUTE

Sector	Maximum amount per Financial Year
Companies in infrastructure and manufacturing sectors, NBFC-IFCs, NBFC-AFCs, Holding Companies and CICs	USD 750 mn or its equivalent
Companies in Software development sector	USD 200 mn or its equivalent
Entities engaged in micro finance activities	USD 100 mn or its equivalent
Other entities	USD 500 mn or its equivalent

Proposals beyond aforesaid limits - APPROVAL ROUTE

## ECB LIABILITY : EQUITY RATIO

- Automatic Route - 4 : 1
- Approval Route - 7 : 1

### Applicability:

- For ECB from direct equity holders
- Not applicable if total of all ECBs upto USD 5 mn or equivalent

## CURRENCY

- ▶ ECB can be raised in any freely convertible foreign currency as well as in INR
- ▶ Change of currency from one convertible foreign currency to any other convertible foreign currency as well as INR is freely permitted
- ▶ Change of currency from INR to any foreign currency, however, not permitted



# SECURITY FOR RAISING ECB



# SECURITY & CHARGE CREATION

## Creation of charge on immovable properties

- ▶ Security shall be subject to Acquisition and Transfer of Immovable Property in India Regulations
- ▶ In case of enforcement / invocation, property should be sold to Person Resident in India and proceeds shall be repatriated to liquidate the outstanding ECB

## Creation of charge on movable properties

- ▶ In the event of enforcement/ invocation of the charge, the claim of the lender will be restricted to the outstanding ECB claim
- ▶ Encumbered movable assets may also be taken out of the country subject to getting 'NOC' from domestic lender/s, if any

## Creation of charge on financial securities

- ▶ Pledge of shares of the borrowing company held by the promoters as well as domestic companies of the borrower is permitted
- ▶ In case of invocation of pledge, transfer of financial securities shall be in accordance with the FEMA provisions as applicable including provisions on sectoral cap and pricing

# ISSUANCE OF GUARANTEE

Issue of Corporate and Personal Guarantee subject to :	Issuance of guarantee etc. by Indian Banks and FIs :
<ul style="list-style-type: none"><li>▶ Copy of Board Resolution with details specified</li><li>▶ Specific request from individuals to issue personal guarantee indicating details of ECB</li></ul>	<ul style="list-style-type: none"><li>▶ Issuance of guarantee, SBLC, letter of undertaking or letter of comfort by Indian banks, FIs and NBFCs is <b>not permitted</b></li><li>▶ Indian financial intermediaries shall <b>not invest</b> in FCCBs in any manner</li></ul>

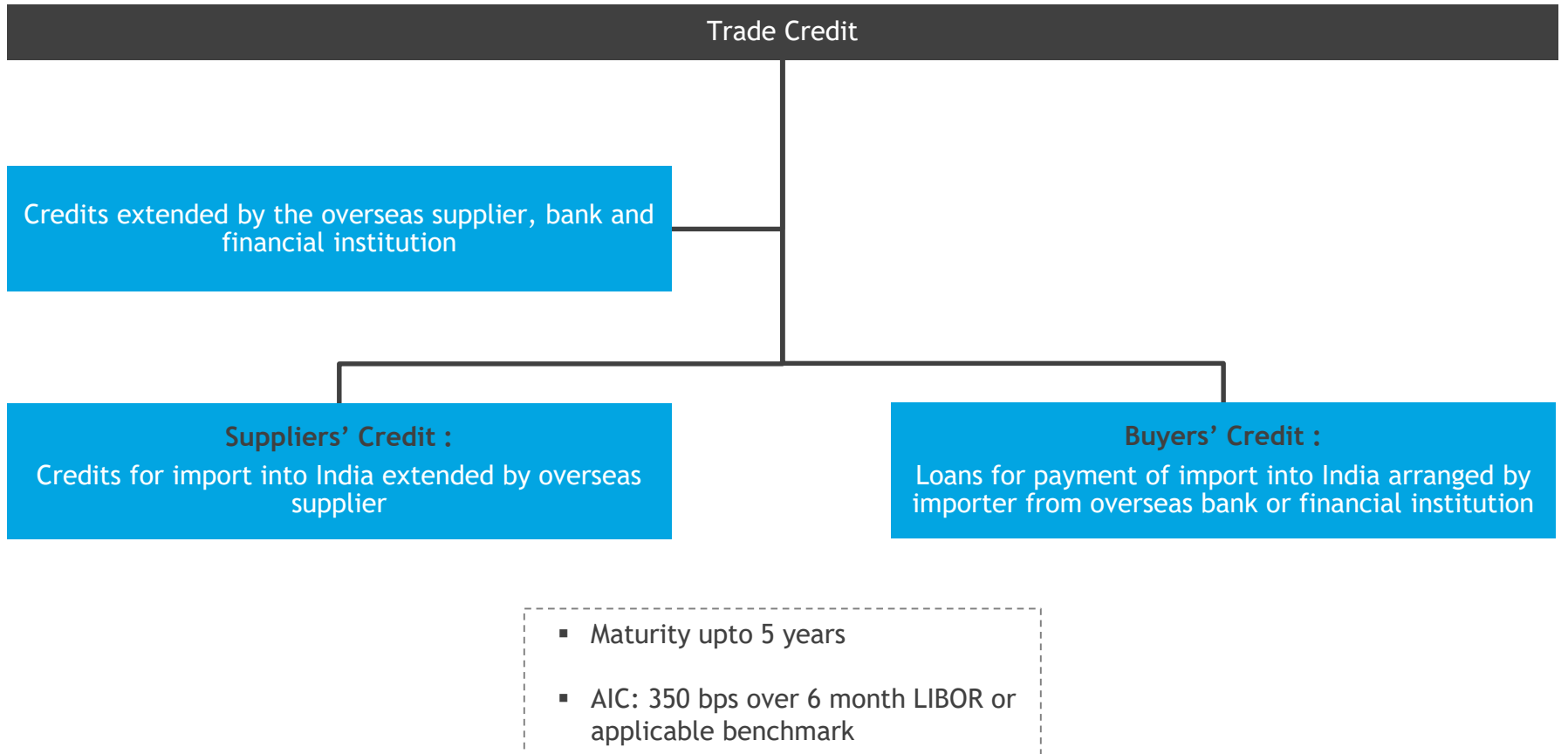
## NON-RESIDENT GUARANTEE FOR DOMESTIC FUND BASED AND NON-FUND BASED FACILITIES:

- ▶ The non-resident guarantor may discharge the liability by:
  - Payment out of rupee balance held in India or
  - Remitting the funds to India or
  - Debit to FCNR(B) / NRE account
- ▶ Non-resident guarantor may enforce his claim against resident borrower to recover the amount and on recovery amount can be repatriated subject to certain conditions
- ▶ General permission is available to resident to make payment to non-resident who has met the liability under a guarantee



TRADE CREDIT

# TRADE CREDIT



# TRADE CREDIT

AUTOMATIC ROUTE - only approval of AD Bank required

Trade Credit for Import of :

Capital and non-capital goods

Maximum amount per import transaction

USD 20 mn or its equivalent

Trade credit beyond aforesaid limits - APPROVAL ROUTE

Capital Goods

Non-Capital Goods

### Maturity Prescription

Upto 5 years from date of shipment

Lesser of:

- 1 year from date of shipment
- Operating cycle

### Guarantee for Trade Credit

- Up to USD 20 million per import transaction
- For a period of maximum 3 years from date of shipment

- Up to USD 20 million per import transaction
- For a period of maximum 1 year from date of shipment



## OTHER KEY ASPECTS

# CONVERSION OF ECB INTO EQUITY



## Conditions for conversion into equity

- ▶ Operating Sector of Borrowing Company:
  - Either covered under the automatic route for FDI or
  - Approval from FIFP has been obtained as per the FEMA Provisions
- ▶ Lender's consent to be obtained
- ▶ Conversion should be without any additional cost and should not result in breach of applicable sector cap
- ▶ Compliance with applicable pricing guidelines for shares (Fair Value on date of conversion)
- ▶ Reporting requirements in Form FC-GPR & ECB 2 Return
- ▶ Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversion is exchanged with them

# FCCBS & FCEBS

## FCCBs

- ▶ Shall conform to the FDI guidelines including sectoral cap
- ▶ Requirements of:
  - Minimum maturity of 5 years
  - Call & put option, if any, shall not be exercisable prior to 5 years
  - Issuance without any warrants attached
  - Issue related expenses upto 4% of issue size and in case of private placement upto 2% of the issue size

## FCEBs

- ▶ Issued only under the approval route
- ▶ Minimum maturity of 5 years
- ▶ Exchangeable into equity share of another company, or on the basis of any equity related warrants attached to debt instruments
- ▶ AIC should be within the ceiling specified by RBI for ECB



# ECB FACILITY FOR START-UPS

Eligibility	An entity recognized as a Startup by the Central Government
Amount	Amount limited to USD 3 mn or equivalent per FY either in INR or convertible foreign currency or combination of both
Min. Avg. Maturity	3 years
AIC	Mutually agreed between the borrower and lender
Recognised Lender	Resident of a country who is member of FATF or FATF-Style Regional Bodies and not from a country non-compliant with FATF guidelines  Not permissible to raise ECB from Overseas branches/subsidiaries of Indian banks and overseas WOS / JV of an Indian company
Form of Borrowing	Loans or non-convertible or optionally convertible or partially convertible preference shares
End Use	Used for any expenditure in connection with the business of borrower
Conversion	Conversion into equity is freely permitted subject to FDI Provisions for start-ups
Security	Movable, immovable, intangible assets (including patents, IPRs), financial securities, etc subject to norms applicable to foreign lenders holding such securities
Guarantee	Issuance of corporate or personal guarantee is allowed  Guarantee by a non-resident is allowed only if it is a recognised lender as above

# POWERS DELEGATED TO AD BANKS

## NOT APPLICABLE IN CASE OF FCCBs / FCEBs

- ▶ Changes/ Modification in the Drawdown/ Repayment Schedule
- ▶ Changes in the currency of Borrowing
- ▶ Change of the AD Category I Bank
- ▶ Change in the name of the Borrower Company
- ▶ Transfer of ECB
- ▶ Change in the recognized Lender Change in the name of the Lender
- ▶ Prepayment of ECB
- ▶ Cancellation of LRN
- ▶ Change in the end use of ECB
- ▶ Reduction in the amount of ECB
- ▶ Changes in all-in-cost of ECB
- ▶ Refinancing of existing ECB.
- ▶ Extension of matured but unpaid ECB



THANK YOU