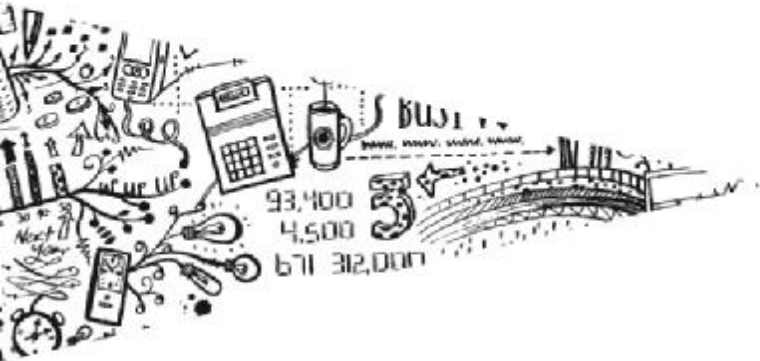


5 July 2011

EY Regulatory Alert

Buyback/ Prepayment of Foreign Currency Convertible Bonds



Background

When Foreign Currency Convertible Bonds (FCCBs) were initially allowed to be issued there was no provision permitting the issuer to buy these back as it was envisaged that these would generally be converted into shares of the issuing company.

In 2008, however, in light of the global financial crisis, investors wanted their money back and so the Reserve Bank of India (RBI) amended the Guidelines for External Commercial Borrowings (ECB Guidelines) to provide that issuing companies to buy the FCCBs back subject to certain conditions. One of the conditions was that the buyback procedures should be completed latest by 30 June 2011.

After review of the said policy for premature buyback, RBI has now decided to extend this time limit and liberalise the procedure in this regard. The details of the same are as under:

Extension of the time limit

The time limit for completing the buyback procedures has been extended by nine months to 31 March 2012.

Key conditions

For FCCBs issued under the automatic route of the ECB Guidelines

The designated AD Category - I banks can allow Indian companies to prematurely buyback FCCBs subject to compliance with the terms and conditions set out hereunder:

- ▶ the buyback value of the FCCB shall be at a minimum discount of 8 percent (as against 15 percent prior to this Circular) on the book value;
- ▶ the funds used for the buyback shall be out of existing foreign currency funds held either in India (including funds held in the Exchange Earner's Foreign Currency account) or abroad and/ or out of fresh External Commercial Borrowing (ECB) raised in conformity with the current ECB norms; and
- ▶ where the fresh ECB is co-terminus with the outstanding maturity of the original FCCB and is for less than three years the all-in-cost ceiling should not exceed 6 months Libor plus 200 basis points as applicable to short term borrowings. In other cases, the all-in-cost for the relevant maturity of the ECB shall be as per prevailing ECB Guidelines.

For FCCBs issued under the approval route of the ECB Guidelines

Indian companies may be permitted to buyback FCCBs up to USD 100 million of the redemption value per company, out of their internal accruals with the prior approval of the RBI, subject to a:

- ▶ minimum discount of 10 percent (as against 25 percent prior to this Circular) of book value for redemption value up to USD 50 million;
- ▶ minimum discount of 15 percent (as against 25 percent prior to this Circular) of book value for the redemption value over USD 50 million and up to USD 75 million; and
- ▶ minimum discount of 20 percent (as against 50 percent prior to this Circular) of book value for the redemption value of over USD 75 million and up to USD 100 million.

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