

Webinar Transcript | 10 September, 2026

New ECB regime v NCDs – Evolving Structures for Private Credit

The recent liberalization of India's ECB framework has materially expanded the toolkit for growth credit, acquisition finance, and structured debt, while also reshaping the choice between ECBs and FPI-NCDs. Against that backdrop, we are pleased to invite you to a webinar examining the opportunities under the new regime, and the potential structures available to investors and borrowers.

Speakers:

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Transcript:

Ruchir:

Hello and welcome to our session on private credit. I'm joined by this excellent panel — two of the sharpest lawyers, and I say that because they are my colleagues, Shreyas and Prashant — and Abhishek, who we often call our "one-handed advisor," because most advisors say "on the one hand you can do this, on the other hand you can do this," and Abhishek always gives one hand — decisive advice, and we love working like that. We also have Mr. Vineet Jain, a very dear friend and a banker who has consistently delivered excellent solutions over the years — and whenever we're frustrated with the RBI, we call him, and it works well for all of us.

So let's lay out the ground basics. This session isn't intended to be a 101 on ECBs — we assume you've all read the ECB regulations. What we're trying to bring is really a dealmaker's lens for foreign credit providers, both offshore private credit players and those looking to put in

shareholder credit. As you know, there are many ways of providing credit into an Indian company: ECBs, which until recently were not so favoured; foreign portfolio investors subscribing to NCDs; foreign venture capital investors putting in money through OCDs and OCRPS; and onshore structures — debt AIFs, NBFCs, and so on — which the government has long been pushing for. Each has its own strategy: an NBFC may be more of a growth vehicle, an AIF more of a yield vehicle, and each has its own challenges. But what we've realised is that these new ECB norms, which are significantly deregulated, are pretty much a game changer. The question now is: after these ECB changes, do you really need NCDs at all? Abhishek even wrote a LinkedIn post today that it's all about ECBs now. The question for a lot of fund managers will also be whether they should still be setting up AIFs in India — we'll get into prevailing market conditions, end use, the legal view, and how the regulator and bankers see it.

I sense a bit of déjà vu sitting here twenty years later. In 2008, when the debt-issue regulations first came in — Schedule 5 of what was then TISPRO — the words were added that foreign institutional investors could invest in listed non-convertible debentures. Everyone wondered what this new entry route even was; you had to list the instrument, warehouse it, and so on — some of you will remember those days, and people asked whether we were doing something "too cute." The prevailing mindset was that foreign debt was tightly regulated: ECB, back then, was only for real-asset classes — largely manufacturing and capital expansion — with eligible-borrower and eligible-lender conditions and all-in-cost ceilings. Then came a breath of fresh air: non-convertible debentures subscribed to by a foreign portfolio investor, with no all-in-cost ceiling and no end-use restriction. After we did the first such instrument, the route actually got shut down for a while, and we had to go regulator to regulator to convince them it was a legitimate structure within the regulations. It hinged on three things: rupee denomination, an overall ceiling on how much NCD an FPI could hold, and listing.

The government's idea at the time was that, like equity capital markets, debt capital markets would boom too and bring in better forex inflows — that didn't happen, or didn't happen as much, and the FPI-NCD route was mostly used for negotiated trades: one FPI, one borrower, 100% subscription. The government then decided it didn't like that concentration and forced diversification — no single FPI or group of FPIs could subscribe to more than 50% of a company's debt issuance. That made investors very uncomfortable, so the government said, keep investing, we'll change the norms — and brought in the Voluntary Retention Route, the FPI-VRR: no concentration or diversification requirement, one FPI could take 100% of an issuance, but 75% of that capital had to stay locked in the country — reinvestable into other Indian entities, but only 25% could be taken out.

Today's discussion is primarily a comparison between that well-understood FPI-VRR route and the new ECB regime, which people are now having to relearn. On debt versus equity — that's its own debate, particularly in tax — but from a regulatory standpoint, anything that gives assured returns and assured exits is treated as debt; the nomenclature doesn't matter, it's the character of the instrument that counts. So let me start with you, Prashant: is there now a good case for people to skip FPI registration and all its pain points and simply do ECB? What have been the broad changes to the ECB regime?

Prashant

ECB was always seen as the boring, safer route, because the policy intent was to have dollar-denominated debt with more safeguards — a cap on the returns you could earn, and a minimum tenure that depended on end use, sometimes running up to ten years. For a long time, if you wanted something a bit more flexible or structured, you looked elsewhere. But these new regulations have really changed the game. You no longer have your minimum average maturity tied to end use — it's now a flat three-year timeline, similar to, though not exactly the same as, the FPI-VRR route: in VRR you can at least get money out of the company within that period, whereas with ECB you're locked in with the company for three years. Still, it's a much shorter horizon than before, and the cap on interest rates is gone — pricing is now supposed to reflect prevailing market conditions.

Ruchir

Let's take that one by one. Earlier there were eligible-borrower and eligible-lender requirements — now anybody can lend and anybody can borrow?

Prashant

That's right. Any person resident outside India can now lend — earlier the lender had to be an entity meeting certain FATF-type compliance requirements. On the borrowing side, any person resident in India can now borrow — earlier this was limited to entities eligible to receive FDI, which excluded structures like InvITs. There's some debate on whether a trust counts as a "person resident in India," but the definition of "person" under FEMA is broad enough

Ruchir

So to distill that: anybody can lend, anybody can borrow, but the real ambiguity is around whether InvITs, REITs and trusts fall within "a person resident in India" who can borrow. Good to have the clarity in principle, though people are still making representations that there's some ambiguity there. Anything else on the big-ticket changes?

Prashant

One other big change: there's effectively no cap now on how much you can borrow. There are two limbs, and it's whichever is higher — you can borrow the higher of one billion dollars or three times your net worth. So a company with two billion dollars of net worth could borrow up to six billion dollars through the ECB route — that's a very wide gate.

Ruchir

And equally, for smaller companies, there's no solvency or net-worth requirement at all up to that one-billion-dollar threshold.

Prashant

Correct — and that ties into the second requirement that's also gone: the old debt-equity ratio of 7:1, which mattered a lot for shareholder loans.

Vineet

It's worth pausing on each relaxation and looking at the government's intent behind it. For a lender, ECB now requires no registration at all — that's the ease-of-doing-business push, letting a lender agree commercially with a borrower and put a financing framework together very quickly. On the borrower side, look at the sectors the relaxations specifically favour — manufacturing, electronics, pharma, semiconductors — sectors where the government wants more investment and more capital to come in, and it's built in a specific concession for genuine end-users investing for their own purposes in those sectors. So every part of this relaxation lines up with the same two goals: getting more capital into the country, and the government's broader ease-of-doing-business agenda.

Ruchir

One other interesting change, beyond the all-in-cost point — the FPI-NCD structure was favoured partly because it was rupee-denominated, and we always assumed dollar denomination would be viewed very differently. But this ECB regulation says you can borrow in dollars or rupees and switch freely between the two, as long as the overall liability on the borrower doesn't change. Vineet, where do you see this switch actually being used?

Vineet

To me, that's one of the biggest advantages of the new regime. An FDI-style NCD is INR-denominated regardless of the borrower's business. Now look at ECB: the government's thinking is that it wants Indian companies exporting more and signing more contracts globally, so it's made the currency freely convertible — dollar to INR, INR to dollar, or any other freely convertible currency. For a corporate treasury, that means if you've borrowed in dollars and then win a large euro contract, you can switch your borrowing into euros to remove that currency mismatch. If your exports aren't naturally hedged, that's commercial — you agree with the lender whether they're willing to take that risk, and if so, you can even switch to INR and back. It's now tied to the corporate's own growth cycle, investment and market access. For the lender, it depends on the currency in which they've raised their own capital, so they can plan their risk accordingly. And this dovetails with other relaxations — a private credit entity based in India can hold an INR account, borrow in INR, receive the coupon in INR, and if it doesn't want to repatriate that coupon, redeploy the same INR to lend again.

Ruchir

That's a lot more commercial. For instance, infrastructure borrowers used to be required to hedge — now there's no mandatory hedging; if you want to hedge commercially, you hedge, and I think people will. But it's about staying commercial and letting people do their jobs.

Prashant

One other change, not expressly stated but a consequence of the ECB rules, is how security creation is handled. In a plain-vanilla ECB loan, the lender can take security directly and receive the charge directly, without going through a debenture-trustee appointment — anyone who's had

to enforce through a debenture trustee knows how painful that structure can be. Having that direct relationship, and direct access to the security, matters a great deal.

Ruchir

There was always a bit of a low-hanging sword over NCD security, even with legal opinions in place — you're creating an onshore security interest, which is fine, but you're effectively creating it in favour of a non-resident indirectly, so the question was always whether someone might eventually pull that trigger. Having direct security versus going through a security trustee matters a lot, especially in enforcement situations.

Vineet

One more procedural point — there used to be a requirement to obtain a bank's NOC before creating such security, and that's been removed. It's meant to make the whole commercial contract quicker and more workable, so we can attract more of this activity — a meaningful change.

Ruchir

Now that ECB looks like the toast of the town — no more FPI hassle of registering — should everyone just shut down their FPIs and move fully to ECB, Shreyas?

Shreyas

First things first — if NCDs shut down, I don't know what you'd have to say about having done the first one back in 2008. More seriously: yes, the ECB regime has been significantly deregulated, no doubt about it. But I wouldn't call the race just yet — there are still three or four pockets of opportunity that will keep pulling deals toward NCDs rather than ECBs. Let's go through them.

First, cost of borrowing. Say you're an investor outside India looking at a new-age tech company with an elongated working-capital cycle, or a semi-stressed infrastructure company. You assess it, decide it's high risk, and want a 19% dollar bond. You agree that with the borrower, and as an NCD investor, that's it — there's no regulatory blessing you need. Under the revised ECB regulations, the cost of borrowing has to be in line with "prevailing market conditions" — a term that isn't defined. Who decides what's a prevailing market condition? Vineet, and his banking team — they go back to their products desk, check benchmark deals, do an apples-to-apples comparison, and so on. If I'm an offshore investor wanting to close a trade quickly, I don't want that regulatory uncertainty hanging over an off-market-priced deal — no ability to test it before or after the fact. If that's my preference, I'd simply do an NCD, with nothing about pricing regulated at all.

Second, end use. Listed NCDs carry essentially no end-use restriction — you can retire debt, domestic or offshore, invest however you like. With ECB, there are two restrictions that get tricky. You can't use ECB proceeds to deal in listed or unlisted securities except when acquiring control — so if you're a borrower wanting to put money into a subsidiary to boost its net worth, or make a minority acquisition, ECB doesn't let you. What you can do is use ECB money to

acquire control — broadly, majority control — and that's about it. NCDs, especially listed ones, don't carry a comparable restriction.

Vineet

Let me come in here. This framework clearly categorises what the permitted end uses are, and it also allows an offshore lender to retire onshore debt, as long as the original loan was used for a permitted end use — that's one part of it. The framework also liberalises the source of repayment: today, if a borrower has taken a 10% dollar ECB and can no longer service it, and has completed the minimum three-year maturity, can they borrow from a domestic lender like Edelweiss to retire it? Yes, they can. What the regulator is guarding against is a borrower gaming a high-interest-rate environment through a short-term lending structure — as long as that's covered, which is why the minimum average maturity has been rationalised, with this carve-out built in after three years.

Ruchir

But I do have a problem there. You go to a private-credit lender only when your regular doors are shut — nobody borrows at a high-teens coupon if a bank will give them 8–9%. So if I've taken an ECB at, say, 15%, why should I be stuck carrying it for another two or three years? If I have the cash flow to retire it in a year, the way I could with an NCD, why can't I? As things stand, using your own cash flow to retire an ECB before three years isn't permitted, and I think that's a real gap — why force the borrower to keep running with expensive offshore credit?

Vineet

Isn't that true of NCD too, though? [Ruchir: No — with NCD, the borrower can retire it using cash flow; the lender has to recycle the money, but the borrower is free of the risk of carrying that heavy interest.] Fair, just to be clear on that distinction.

Shreyas

Third, refinancing flexibility more broadly. How do you refinance an NCD? You can refinance it using domestic debt, offshore debt, domestic equity or offshore equity — everything is permitted. Can you do the same with an ECB? No — you can only refinance an ECB with another ECB, or repay it using offshore equity. So significant pools of domestic capital are closed off if you're funded by ECB — for example, if you're a company heading toward an IPO and have borrowed via ECB, you can't use domestic proceeds to repay it. That's another specific pocket where NCD is better.

Shreyas

The fourth is your downside scenario — early exit within the three-year minimum. Under an NCD, especially the VRR route, if there's an event of default, can you take money out? Yes — you can force the borrower to pay, appropriate the escrow, and so on. And there are structures under which borrowers cooperate to let you take money out even well within the three-year period.

Ruchir

Let's double-click on that — taking money out of the company, though, not necessarily out of the country: 75% of your capital remains locked in the country, though not necessarily in the same company, so you can redeploy it.

Shreyas

Right, and there are structures to take even that out of the country. Say you have a small VRR allocation and there's someone else with a much bigger VRR allocation — if you're taking money out of the borrower within the three-year period, you can trade your VRR allocation to the party with the bigger limit. Once your 25% free portion is used up, they can take the entire amount out because their 25% headroom is correspondingly larger. So it's a real service the market has built, and it means far less effective lock-in under NCD, whereas under ECB, cash extraction from the company is genuinely harder.

The issue with ECB isn't that early exit is unavailable — it's that you generally need RBI permission to take money out within three years in an event-of-default scenario.

Ruchir

Do you think the RBI would actually grant that permission before three years?

Vineet

We have seen such permissions granted — it's not that it's unavailable. It's more that the industry tends to find an alternative structural route to the same outcome. But for a genuine scenario, regulators are generally comfortable looking at the facts and giving their view.

Prashant

That's fair, but the restriction itself will always be there as an end-use point within the three years. One other thing worth flagging — even NCDs aren't entirely free of end-use ambiguity. For unlisted NCDs, can you use the proceeds for capital-market transactions?

Ruchir

Let's double-click on that. For listed NCDs there's no issue, but for unlisted NCDs you can't use proceeds for capital-market purposes. Shreyas, what does "capital markets" actually mean here — can unlisted-NCD money be used to acquire shares of another unlisted private company?

Shreyas

I'll address both threads. First, on the loan-repayment point we discussed — if you'd used a domestic loan to acquire shares, and that use was itself restricted, then taking a fresh ECB to retire that domestic loan wouldn't be allowed either, because the restriction attaches to the underlying use. On "capital markets" for unlisted NCDs — there's informal SEBI guidance on this, not bang on point but close to it in the Genpact matter, which speaks to what "capital markets" means.

Our broader reading, and Vineet, feel free to weigh in on market practice — is that "capital markets" doesn't capture unlisted securities. So if you're in, say, the real-estate services business, and you've raised unlisted-NCD money that you want to put into your subsidiary, is that a

restricted "capital markets" use because the subsidiary is unlisted? Based on SEBI's logic and other informal guidance, we'd say no.

Ruchir

So essentially, "capital markets" here is understood as public-market, listed securities, and unlisted-NCD money can be used for a downstream acquisition. Vineet, feel free to say "no comment" — how do you see it?

Vineet

We rely on smart lawyers like you for exactly these aspects.

Ruchir

So we're okay on that — we've done this enough and are comfortable with the position.

I want to double-click on this "prevailing market condition" concept, before we move to tax. At one point, for tax purposes, if a borrower had to pay a high rate — 15–18% — we'd take term sheets from a couple of banks or NBFCs quoting even higher, then say a relative was lending at a slightly lower rate, and call that complete arm's length. "Market" is very subjective — security, comfort levels, everything matters. Is there a bright-line test for what "prevailing market condition" actually means? People have a lot of questions — where do processing fees, make-whole amounts and so on fit in?

Prashant

Before Vineet answers, one clarification so everyone's on the same page: the new regulations actually set two different standards — "market conditions" for third-party transactions, and "arm's length" when you're dealing with a related party or the borrower. And arm's length won't always equal market conditions — one way to look at it, if you apply the tax construct of arm's length, a cost-plus, transfer-pricing-style valuation could actually come out lower than market conditions. Vineet, over to you, and then Abhishek on how he reads it.

Ruchir

For arm's length, naturally, you can get a certification — Abhishek can give you one, and you can call him conservative, but he'll give it. For market conditions, though, you have a rather more nervous banker giving you that.

Vineet

I'll start with your opening remarks — you did the very first FPI-NCD deal in 2008, correct, at 18%, when it was brand new and there was no precedent. Naturally the earliest deals happened at much lower cost, and precedent built up from there, giving industry and custodians comfort. ECBs have existed for a while with the overhang of a fixed all-in-cost ceiling — roughly 500 to 550 basis points over a prevailing benchmark — and that's now been liberalised to "prevailing market condition." As a bank, whenever there's a regulatory change like this, we have to diligence what it actually means, because the intent can't be simply to take cash out. As long as a borrower can establish genuine bona fides, that's what we look for when we certify a transaction. As an example, we allowed a 14% dollar-denominated deal after diligencing three things: the

client was already servicing debt with a reputed onshore lender at a higher cost; our own private-credit business gave us independent visibility into the sector and the borrower's profile and what rate it should command; and, finally, every bank has its own credit metrics that the deal has to fit within. That does introduce a degree of bank subjectivity that FPI pricing doesn't currently carry, but as more precedent builds over the next couple of years, more banks will get comfortable certifying an all-in-cost or prevailing-market-condition rate.

On arm's length — it's a well-established Companies Act, related-party-transaction concept. Abhishek asked me an interesting question: can a related party actually borrow below arm's length pricing? We believe yes, and we've done it as a bank — partly because it benefits the country, and partly because in these grey areas an AD bank can always check its thinking quickly with the regulator by giving the right rationale, so we're comfortable allowing these bespoke scenarios. What matters is that a related-party borrower with cash trapped onshore shouldn't use a high, tax-deductible ECB interest rate as a route to extract cash — that has to be tested, which is exactly why the arm's-length principle exists for related-party pricing.

Ruchir

Abhishek, how do you see this — why do we need both "prevailing market conditions" and "arm's length" for related parties, particularly for shareholder financing?

Abhishek

Sure — a few thoughts. First, if you look at how regulations, and even NCLT orders, have evolved, there's a general belief among regulators, and to some extent courts, that income tax principles shouldn't be undermined by regulatory relaxation. My reading is that the arm's-length reference, even though market conditions is the primary test, exists to say: don't abuse the market-conditions standard to pay out an excessive rate of interest — still follow the income-tax rules. One could argue an arm's-length test — how two unrelated parties would transact — is the very core of transfer pricing and shouldn't differ from a market-conditions test at all. But "market conditions" is a much broader concept that doesn't account for the specific borrower-lender relationship, so I read the arm's-length reference as more of a precautionary secondary check rather than a genuinely separate test. In any case, getting an ECB approval or a loan-registration number doesn't mean you can skip your transfer-pricing documentation — you can't say your bank is now your transfer-pricing advisor and has given you a transfer-pricing certificate. You still have to go through that exercise; this is just an additional check, not a fundamental change.

Abhishek

Historically, in the context of NCDs and CCDs — and I've spent a lot of effort advising on those, reading more tax treaties than countries I've actually visited; jurisdictions like Cyprus became very much in vogue and then fell out of vogue along with CCDs — one recurring debate, particularly in inter-company or shareholder financing done purely for tax reasons, was: even if my interest is excessive and gets disallowed as a deduction, can I still get the benefit of a lower withholding rate when I repatriate it?

Ruchir

Just on market conditions versus arm's length before we get to tax: market conditions could be arm's length, but arm's length won't always be market conditions — in my experience, tax advisors treat arm's length as the most conservative benchmark. On prevailing market conditions, here's a thought — perhaps not for the record — the safest way to establish it might be for a borrower wanting an 18–20% IRR to first take a loan from, say, an HSBC private-equity-style credit fund at 20%, and then refinance that with an ECB — at which point you can say the 20% rate is already established market precedent, since this is only refinancing.

Vineet

But a borrower would never actually want to borrow at 20% if it could get cheaper capital — that only works for a genuinely desperate borrower. If the market precedent is set with a genuine, non-manufactured benchmark, then yes, absolutely, someone could misuse this route to justify paying a higher cost — that's exactly the kind of thing we have to diligence against.

Abhishek

Coming back to tax — one of the ECB regulations excludes tax from the calculation of the cost of borrowing and market conditions. But every genuine third-party lender looks at their net realisation out of India — tax is always, in that sense, an included cost for a real lender. So when you're comparing to prevailing market conditions, you may take currency into account, but if you don't take tax into account, that comparison will always show a gap, particularly since almost every private-credit lender is really targeting a net-of-tax return, not a headline coupon.

Vineet

It's interesting — ECB has always been thought of as a loan and a rate of interest, but a private-credit business actually underwrites to an IRR, which can be built from various combinations of cost as long as it hits the target return. Withholding tax always becomes part of that IRR math. The all-in-cost definition does exclude withholding tax, but in practice a term sheet doesn't spell that out — you don't say "I need 20%, minus 10% withholding, so my net cost is 18.2%"; you simply say your rate of interest is 20%, and everything is assessed against that headline number, net of withholding separately.

Ruchir

So essentially this all boils down to an IRR-level sanity check — processing fees, prepayment charges, make-whole amounts, everything feeds in eventually. The real difference is that for an NCD, that sanity check is largely a tax-driven exercise; for an ECB, it's a prevailing-market-conditions exercise, and that can be genuinely troublesome, because two parties may honestly disagree about whether, say, 20% is or isn't a market rate.

Shreyas

On that — cost of borrowing is now a defined term under law, and it only excludes two things: taxes and commitment fees. Every other fee sits inside the cost-of-borrowing limit.

Prashant

But there's nothing new there really — they've just carried over the old all-in-cost definition.

Shreyas

That's true. When you're assessing it, you're doing it apples to apples across the entire universe of fees you're extracting — any advisory fee, any other fee. So, for example, a 14% coupon plus a 2% commitment fee — that commitment fee alone stays excluded from the cost-of-borrowing calculation.

Ruchir

Let's move to end use — this is draconian for downstream acquisition financing under ECB, because it says the money can only be used to acquire control, which implies non-control investments aren't possible, though there may be other ways to read it, and it also says the use should be strategic — which doesn't quite make sense to me, since control is, in all likelihood, always strategic. So let's leave that aside and focus on what "control" actually means. Under the takeover code, the Companies Act and various other legislations, control today is defined both objectively, by a percentage threshold, and subjectively, through veto rights under a shareholders' agreement, or even from an accounting standpoint. So can I not say that, because I have subjective control, my use is strategic?

Vineet

This is the crux of ECB, because people have started comparing it directly to FDI. Think about it: for a downstream investment earlier, you needed pure equity capital, which locks up capital. Today, if a corporate wants to expand its footprint in India through acquisition, for a strategic purpose, ECB is a route that lets Indian companies bring in debt that can later be upstreamed without a tax cost — that's the intent the regulator is trying to solve for. But the regulation still restricts investment in securities generally. So our understanding is that any investment beyond acquiring control is treated as investment in securities, not for a strategic purpose. There is genuine ambiguity around incremental increases — moving from 51% to 74%, or 74% to 90% — because the onshore borrowing rules categorise those levels differently. But our reading is that, over time, the regulator has provided a threshold where you can do leveraged downstream financing via ECB, provided you're acquiring control — and for us, control means 50% plus one share.

Ruchir

Why doesn't the regulation just say that explicitly, rather than using the word "control"?

Prashant

Actually, to be fair, this is a genuine relaxation — the regulation refers to "acquisition of control under applicable law" and cross-references several statutes, including the takeover code, where control is understood at a much lower threshold, around 26%.

Shreyas

And if not control outright, at least an open offer is triggered above roughly 25%.

Vineet

For example — this hasn't actually happened yet in the market, in the roughly five months this regime has existed — but if a transaction triggers an open offer under a specific takeover-code exemption, a view can be taken that ECB should be available for it, without insisting on the private-transaction 50% control threshold.

Prashant

So say I'm acquiring a promoter's roughly 40% stake in a listed company via a tender offer, and I don't yet know exactly how much I'll end up acquiring — I should still be able to take an ECB for that tender offer.

Vineet

Yes — in fact, a deferred payment for a control transaction can also be funded through ECB, because it's still financing the consideration; you're paying it a year later, but it's possible.

Shreyas

So what's the one-line test, Vineet — is the intent here acquisition financing as such, or specifically the acquisition of control? Because whether you acquire control by putting in money, or put money into an entity you already control, the money still sits with the same subsidiary either way.

Vineet

The intent is to allow ECB only where it's genuinely acquisition financing for a majority-control acquisition — that's how we look at it, and that's why it needs to be strategic.

Ruchir

So if you already control an entity and want to make a further, incremental investment despite already being in control, using ECB for that may not be permitted — is that the right way to read it?

Vineet

Yes, broadly, on our reading — though competition in the private-credit market for acquisition-financing mandates against NBFCs is intense, so this is very much an area that keeps evolving.

Shreyas

This circles back to the same end-use point under NCDs, actually — you can take NCD money and put it into your subsidiary regardless.

Ruchir

Which is correspondingly far more comfortable, and much easier.

Ruchir

Private credit is facing headwinds in some pockets, but in others it's raising strong capital from LPs, and India is very much at the forefront of that. As the broader market turns — and

unfortunately, or perhaps fortunately, next year you might see more take-privates — in those situations, if a promoter needs to fund a buyout, would you rather deal with the ECB control question, or simply do an NCD and use it for acquisition financing as an end use?

Prashant

One thing we shouldn't lose sight of — it's not that easy to set up an FPI entity either. I don't mind Shreyas speaking to that.

Vineet

As a private-credit lender, if I've identified an opportunity, I can fund it in about seven days through ECB — that speed is real.

Ruchir

And one more practical point, Prashant — multi-tranche drawdowns. With a single ECB loan document, you can draw down every month quite easily. What would you do under FPI-NCD — issue a fresh series of NCDs every month, even under a shelf prospectus?

Prashant

You really can't — the compliance alone would take too long.

Ruchir

On that note, can you set out, in about thirty seconds, the big practical challenges of setting up an FPI?

Prashant

First, the registration itself — lining up a custodian and DDP who'll be liaising with SEBI at every stage. Then there's continual disclosure and annual filings with SEBI, which keep becoming more granular — you have to disclose your ultimate natural person, usually at a 10% threshold, with additional concentration-based disclosure if you're heavily invested in a single entity, or above a certain AUM. And you can't do partly-paid instruments, which is exactly why the kind of tranche drawdown we just discussed is such a challenge under FPI-NCD.

Ruchir

Before we move to tax — an ECB can be retired with a fresh ECB, or with FDI proceeds under the NDI route, and there's a third, quite interesting one: in a merger, demerger or similar strategic reorganisation, you get a much freer hand to retire the ECB.

Vineet

And also liquidation, and reverse-flip structures.

Ruchir

Right — liquidation, and reverse flips. Can you explain how reverse flips are being used?

Vineet

A lot of corporates have found real value in their India business and want India to become their favoured global headquarters — for some, that's about an eventual listing; for others, a concentrated India business simply makes it sensible to headquarter there. Under the cross-border merger regulations, this kind of restructuring means all the offshore debt automatically lands on the Indian entity's books and becomes an ECB. Ahead of a capital-markets transaction, corporates want to clean up their balance sheet, and merchant bankers often prefer a specific category of debt — related-party or unrelated-party — sitting on the books before going to SEBI for an IPO. ECB gives a clean gateway to tidy up the existing capital structure before that SEBI process. These three scenarios — fresh ECB, FDI/NDI repayment, and merger/demerger/reverse-flip repayment — are exactly the situations where the regulator had already been granting case-by-case approvals; recognising that pattern, they've now deregulated it.

Ruchir

So, end use — particularly around downstream acquisitions — and prevailing market conditions remain real friction points, but otherwise ECB is really stealing the show. Abhishek, let's turn to growth and performing credit from your side, and OCRPS.

Abhishek

On the tax side, there are several nuances. For the last decade or so, India relied on favourable withholding tax rates on both ECBs and NCDs — apart from all the regulatory flexibility already discussed, that was one of the other big reasons NCDs stayed in vogue, and the withholding stayed within a defined band. That concessional band is now gone entirely, apart from a narrow carve-out for listed NCDs on GIFT City exchanges, taxed at 9% — we'll come back to that. So for an ordinary Indian borrower, there's no longer any arbitrage in the choice of borrowing route from a withholding-tax perspective — you either apply the domestic-law rate or the treaty rate. But it doesn't stop there. There's the deductibility question itself — borrowing to build a new plant is rarely contentious, but if you're borrowing to acquire shares, even once you clear the control and strategic-purpose thresholds we discussed, can you actually deduct the interest? Should you merge with the target so the target's cash flows and the loan sit in the same entity? There's a whole cluster of issues around interest deductibility on acquisition financing, and separately, a category of growth credit where the borrower is more of an investment-holding company with cash flows well into the future, where deductibility isn't really the relevant lens.

Abhishek

In my view, what these ECB relaxations achieve is quite interesting alongside the OCRPS and OCD structures that PN3-restricted investors used to use because they couldn't do plain equity — staying invested until they sorted out an approval. Now, in certain situations, it's worth asking whether, instead of a pure debt structure, particularly for related-party or intra-group financing, you might use convertible preference shares — not debentures. The reason ties back to the IRR concept Vineet described: once an OCRPS is issued, it's still categorised as an ECB, so the same cost-of-borrowing limits apply, but assuming you're within those limits, redemption of an unlisted bond or debenture is now, following a recent tax-law amendment, deemed short-term capital gains.

Abhishek

That's a real drag on the older approach, where lenders would wait almost until maturity and sell their instruments so the embedded redemption premium came to them as a capital gain, or borrowers paid a low coupon plus a high redemption premium — that route is largely closed now, absent a trading-style interpretation. But it's opened up an interesting alternative: a redemption premium or a secondary-transaction gain on shares, rather than debentures, held for twenty-four months or more, still qualifies as a long-term capital gain and escapes this new deeming rule entirely.

Ruchir

And that's a nice opportunity for growth-credit players, because OCRPS or OCDs used to require an FVCI licence — easier to get today than it once was, but still a licence with real compliance obligations. Today, any offshore pooling vehicle can do OCRPS or OCD-type structures under the ECB route without that licence — OCRPS in particular sits fairly lightly on the company's balance sheet since it's still shares, and there's even some tax arbitrage there.

Abhishek

Coming back to that deeming fiction — Indian tax law now deems redemption premiums and gains on secondary transfers of unlisted debentures as short-term capital gains. What's become very relevant recently is that most treaties — beyond the usual suspects, so Mauritius, Luxembourg, Singapore and others — exempt capital gains on instruments other than shares from Indian tax, with no 2017-style grandfathering attached to that particular exemption; it simply exempts gains on transfer of non-share instruments. So the live question we're debating with several clients — and some are even taking out insurance on the position — is: purely from a lender's perspective, if you back-end your returns on a classic debenture and pay it all as a redemption premium, can you claim a full treaty exemption on that premium, on the basis that Indian tax law itself deems it a short-term capital gain? Assuming the lender meets the treaty's basic substance requirements, and since you called me a one-handed tax advisor, my view is: yes, that's a strong position to take, no ifs or buts. The only open question is whether it gets litigated — I think it will, quite possibly becoming one of the next "Tiger Global"-type matters going all the way to the Supreme Court — and whether the government, since I don't think this was its intended arbitrage, comes out with a clarification.

Ruchir

To summarise for the audience — if you're investing from, say, Mauritius, where the treaty withholding rate is around 7.5%, or Singapore, and most other jurisdictions sit somewhere between 10 and 15%, a redemption premium that's characterised as a capital gain isn't taxed in India under the treaty; it's taxed in the recipient's home state, and countries like Singapore don't tax capital gains at all — so the effective rate could be zero. The practical friction for the borrower, Abhishek, is that they'll still generally want to withhold unless they can get a nil-withholding certificate, which is where this gets genuinely tricky — perhaps something tax insurers can step into.

Abhishek

This is absolutely a live issue, and it extends to AIF structures too — even if it's a controlled AIF, the general regulatory view has been that an AIF can do OCDs, which was actually one reason AIFs became so popular over the last several years, precisely to access this kind of structuring. So this ECB relaxation may end up hurting some AIF structures even more than the FPI route, since AIFs earning this redemption premium on a pass-through basis to, say, a Singapore investor have taken the same position that it should be treated as the investor's capital gain, with the onus then falling on the fund manager to make that determination.

Shreyas

Even under the ECB route, Abhishek, would you prefer to lend through an instrument rather than a plain-vanilla loan, so you preserve the ability to do secondaries and capture that capital-gains arbitrage across jurisdictions?

Abhishek

For sure — if you want to take advantage of that capital-gains arbitrage, an instrument or security is essential, because tradeability is impaired in a plain loan. Shares work too, and open up other considerations. And one clever point on the three-year minimum: it's a minimum average maturity, so it doesn't stop you from repaying earlier, provided the overall average maturity still clears three years.

Prashant

Right — it's effectively a table, an average-maturity schedule you have to meet.

Vineet

And part-payment is possible.

No discussion is complete without GIFT City. Abhishek, for the private-credit players in the room, and with a lot of people now thinking about setting up entities there — do you think GIFT City, combined with this ECB relaxation and the FPI regime, together provide a complete ecosystem for offshore investors to tap into India's growth story on the expansion side?

Abhishek

From a pure tax perspective — if you're a borrower structuring through bonds listed on a GIFT City exchange, the interest withholding drops to 9%, a real plus, since the lowest treaty rate you'd otherwise get is typically around 15%, excluding Mauritius-type outliers. Importantly, the borrower doesn't need to be based in GIFT City for this — you just need to issue rupee-denominated bonds listed on a GIFT City exchange, and the withholding on that interest is 9%; unlisted bonds fall back to the usual rate.

Vineet

And can a lender receiving that 9%-withheld interest also claim GIFT City's broader tax holiday — the exemption people often refer to as ten out of fifteen years?

Abhishek

That broader exemption applies more to business income and profits — relevant for fund managers and operating companies — and plain interest income wouldn't be covered under it.

Vineet

But if the lender instead holds a treasury-type licence where its business is genuinely giving loans and earning interest, that's a different characterisation.

Abhishek

Right — that would already be subject to tax as it's accruing, since this is simply an offshore lender with no GIFT City presence, and the instrument happens to be listed on a GIFT exchange, which is what earns you the 9% rate. Previously you'd have needed an FPI licence to list those bonds; now, technically, you can do it through ECB.

Ruchir

So that becomes much easier. There's a separate question, which we're short on time for, about how you structure your GIFT vehicle itself — a Category-II-equivalent GIFT vehicle is pass-through, so most GIFT vehicles end up being set up as Category-III equivalents, more like hedge funds, which brings its own set of challenges — a discussion for another time. And one last practical point for the credit funds in the room: that redemption-premium-as-capital-gains position we discussed — test it with your borrower, and if the borrower isn't convinced, we can issue a tax opinion on it.

Last question, Shreyas, and we'll close with you — are we now at a point where people should just forget about setting up credit AIFs or debt AIFs in India, forget the government's onshoring push, sit abroad, set up an offshore pooling vehicle with an Indian investment adviser that simply sources and advises on deals for the offshore vehicle, and do everything via ECB from there?

Shreyas

I think it's a yes-and-no question. The politically correct answer is: you should onshore — that's what the entire regulatory apparatus has been encouraging, so please continue to think about AIFs and so on. But the way the new ECB regime has come through, there's a genuine question of what setting up an AIF actually buys you — you need an entity here, a team, ongoing filings — if your opportunity doesn't fall into the three or four specific situations we've discussed where NCDs or onshore structures remain clearly better. If there's a whole world of private credit outside those situations, it's easy for someone to just put money in via ECB without any registration at all — that question will naturally come up. As the regime matures over the next year to eighteen months, and some of the open points around prevailing market conditions and end use get clearer through practice or guidance, more people will genuinely ask whether there's any real benefit to setting up an AIF, given it's pass-through from a tax perspective anyway, but requires a lot more time and effort on every other front. One of the unintended consequences here could well be people comparing ECB against onshoring into debt AIFs, and simply concluding ECB is fine.

Prashant

So it really comes down to just the three or four restricted-end-use and MAMP-type situations we discussed.

Shreyas

Correct — end uses, minimum average maturity, all of it. I think this will naturally get ironed out as the regime runs for a year or so, but there is presumably a large world of private credit that simply doesn't touch on these one or two scenarios at all.

Ruchir

So it really is a trade-off in your own mind — is the three-year minimum average maturity under ECB actually a big constraint for your strategy, or is what really matters to you the downstream-acquisition-financing and securities flexibility, where NCDs still have the edge?

Shreyas

Exactly — plus smaller-tenor loans, or situations where you want complete clarity on investing in securities. Those specific opportunities aside, there is a large segment of private credit that simply doesn't touch on these one or two scenarios.

Ruchir

Looking ahead — could we see something like an offshore pooling vehicle directly buying up corporate loan books, say from an Ashok Leyland or a Shriram Transport Finance, the way this used to be done through securitisation trusts, where an NBFC transferred loans into a trust that issued PTCs subscribed to by FPIs under the old Schedule 5 regime? Today, that same kind of corporate-credit secondary market could develop with an offshore credit vehicle buying those loans directly under the ECB route, with the added benefit of the capital-gains exemption we discussed.

Shreyas

Much like what Oaktree did with DHFL, and others have since. ■ Abhishek's holding back a little on some of this, so people reach out for an opinion. ■

Ruchir

Thank you, everyone — thank you very much, very helpful. Any questions, please email us; details will be shared. Thank you.