



23<sup>rd</sup> February 2026

## **Reserve Bank of India Notification – FEMA 3(R) Amendment, 2026 (Borrowing & Lending)**

The Notification dated 9 February 2026 amends the existing External Commercial Borrowing (ECB) and borrowing framework under FEMA. It revises definitions, strengthens end-use restrictions, rationalises borrowing conditions, and introduces a more structured compliance and reporting regime.

### **Analysis**

#### **➤ Revised Definitions Framework**

- Key terms such as **ECB, ECL, benchmark rate, cost of borrowing, related party, control, and net worth** have been redefined for clarity.
- Introduction of **uniform interpretation aligned with the Companies Act, 2013 and other FEMA regulations.**
- Benchmark rate now linked to:
  - Interbank/ARR (for foreign currency borrowings)
  - Government security yields (for INR borrowings)

#### **➤ Restriction on End-Use of Borrowed Funds (New Regulation 3A)**

##### **Borrowed funds cannot be used for:**

- Chit funds and Nidhi companies
- Real estate business (with limited exceptions like infrastructure and industrial parks)
- Investment in securities (except strategic corporate actions)
- Repayment of certain domestic loans (especially NPAs)
- On-lending for restricted activities

##### **Permitted carve-outs include:**

- Infrastructure and industrial park development (subject to conditions)
- Certain agricultural activities (e.g., controlled environment farming, animal husbandry)



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➤ **ECB Framework – Key Structural Changes**

- Eligible borrowers include any entity (excluding individuals) incorporated in India, and even entities under investigation may raise ECB subject to prescribed disclosures.
  - Recognised lenders include foreign entities, overseas branches, and financial institutions located in IFSCs.
  - Borrowing limits permit ECB up to the higher of USD 1 billion or 300% of the borrower's net worth.
  - Maturity requirements prescribe a standard minimum average maturity of 3 years, with manufacturing sector entities allowed shorter tenures of 1–3 years subject to specified caps.
  - Cost and structure of borrowing must be aligned with market-linked pricing and comply with the arm's length principle in case of related party transactions.
  - Fund Handling, Security & Conversion: ECB proceeds can be drawn only after obtaining a Loan Registration Number (LRN), must be utilised within prescribed timelines, may be secured against tangible or intangible assets, and can be converted into equity (non-debt instruments) subject to regulatory conditions.
  - Reporting & Compliance Mechanism Borrowers are required to undertake periodic reporting through Form ECB 1 and Form ECB 2, with non-compliance potentially leading to classification as an “untraceable borrower” and exposure to late submission fees.
- The amended framework impacts Indian companies and LLPs raising External Commercial Borrowings (ECB), particularly in manufacturing, infrastructure, and industrial park sectors, along with startups and growth-stage companies accessing offshore funding. It also covers banks and Authorised Dealer (AD Category I) banks, foreign lenders including IFSC entities, and legal, compliance, and finance professionals advising on FEMA and ECB matters. In practical terms, overseas borrowing is now more structured with stricter end-use restrictions, limiting deployment in speculative or non-core activities. While sectors like manufacturing and infrastructure benefit from some flexibility, compliance requirements have increased with mandatory reporting and greater transparency. Overall, the framework ensures that foreign borrowings are used for genuine business and productive purposes rather than diversion or financial engineering.



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➤ **Key Takeaways**

- The 2026 amendment tightens end-use restrictions and strengthens regulatory oversight.
  - ECB limits and eligibility have been rationalised with higher flexibility for genuine businesses.
  - Enhanced reporting and compliance mechanisms increase accountability.
  - The framework promotes productive deployment of foreign capital while reducing misuse risks.
- The notification is attached herein.

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**Reserve Bank of India Draft Directions – Foreign Exchange Dealings of Authorised Persons**

The draft directions issued by the RBI revise the regulatory framework governing foreign exchange dealings by Authorised Persons. The changes aim to enhance operational flexibility, expand permitted products and venues, and streamline reporting and risk management requirements.

**Analysis**

- Authorised Dealers are permitted to undertake a wider range of foreign exchange transactions, including OTC trades, derivative contracts, and transactions with overseas branches, IFSC units, and offshore entities for hedging, balance sheet management, and market-making purposes.
- The framework allows participation in non-deliverable derivative contracts (NDDCs) involving INR, and trading on both domestic and overseas electronic trading platforms (ETPs), subject to regulatory safeguards and FATF-compliant jurisdictions.
- Authorised Dealers may undertake exchange-traded currency derivatives in India and IFSCs, and engage in overseas exchange transactions (excluding INR) through regulated markets.



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- Banks are permitted to hedge gold price risk in overseas markets and deploy surplus foreign currency funds in short-term overseas instruments, reverse repos, and sovereign debt securities, subject to internal policies.
- Authorised Dealer Category-I banks can borrow in foreign currency from overseas entities, subject to limits (100% of Tier I capital or USD 10 million, whichever is higher), with certain exclusions and RBI approval requirements for higher borrowings.
- Authorised Dealers must frame board-approved policies, including limits on net open positions (capped at 25% of capital), with RBI retaining discretion to impose additional limits on INR exposure.
- Dealers are allowed to transact beyond onshore market hours and across multiple jurisdictions, enhancing operational flexibility in global markets.
- Reporting formats, including net open position reporting, have been updated with an aim to simplify compliance requirements.
- The draft directions primarily impact Authorised Dealer Category-I banks, Standalone Primary Dealers, and other authorised persons engaged in foreign exchange transactions, along with IFSC entities, overseas counterparties, and financial institutions involved in derivatives and forex markets. It also affects treasury teams, risk managers, and compliance professionals within banks and financial institutions. In practical terms, the framework makes it easier for banks and authorised entities to participate in global forex markets by expanding the range of products and trading venues available to them. It allows better management of currency and interest rate risks through derivatives and overseas transactions, while also providing flexibility in deploying surplus foreign currency funds.
- At the same time, governance and risk controls have been strengthened through internal policy requirements and exposure limits, ensuring that increased flexibility is balanced with regulatory oversight. Overall, the changes aim to create a more efficient, globally integrated, and flexible foreign exchange market environment.
- **Key Takeaways**
  - The draft directions expand the scope of permissible forex transactions and trading platforms.



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- Greater flexibility is provided for hedging, investments, and overseas borrowing.
- Strengthened governance and risk management frameworks ensure controlled exposure.
- Simplified reporting and operational flexibility enhance ease of doing forex business.

➤ The notification is attached herein.

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### **Invocation of Personal Guarantee Is a Mandatory Precondition for Insolvency Proceedings Against Guarantors: NCLAT New Delhi**

The National Company Law Appellate Tribunal (NCLAT), New Delhi, comprising of **Judicial Member Mohd. Faiz Alam Khan**, allowed the appeal in *Amit Kumar Kejriwal v. UCO Bank*, setting aside the order of the National Company Law Tribunal, Kolkata Bench, which had admitted a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 for initiation of personal insolvency proceedings against the appellant.

The dispute arose from credit facilities of ₹1.75 crore extended by UCO Bank to Swati International, a partnership firm and predecessor of Swati Pvt. Ltd. The appellant had executed a continuing personal guarantee in 2004. The loan account was declared NPA on 30 June 2019, and corporate insolvency resolution proceedings were initiated against the corporate debtor in July 2019. Subsequently, UCO Bank issued a demand notice in Form B under Rule 7(1) of the 2019 Rules and filed an application under Section 95 IBC against the appellant as personal guarantor, which was admitted by the NCLT, leading to the present appeal.

The NCLAT examined whether a demand notice issued in Form B could itself be treated as a notice invoking the personal guarantee. Analysing the guarantee deed, the definitions of “debt” and “default” under Sections 3(11) and 3(12) IBC, Section 95(4) of the Code, and Rules 3(1)(e) and 7 of the 2019 Rules, the Tribunal held that a personal guarantor becomes a “debtor” only when the guarantee is invoked in terms of the contract. The Tribunal reiterated that default on the part of a guarantor cannot exist unless liability has crystallised through invocation of the guarantee. Relying on earlier coordinate bench decisions in *Pooja Ramesh Singh v. State Bank of India* and *State Bank of India v. Deepak Kumar Singhania*, the Tribunal rejected the contention that a Form B notice can substitute invocation of the guarantee.



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In conclusion, the NCLAT held that since UCO Bank had admittedly not invoked the personal guarantee prior to issuing the Form B notice, no default existed against the appellant. The admission of the Section 95 application by the NCLT was therefore legally unsustainable. The impugned order was set aside, the appeal was allowed, and the Tribunal further directed that a copy of the judgment be forwarded to the Chairman of UCO Bank, noting the lapse on the part of bank officials in initiating insolvency proceedings without invoking the guarantee.

**Cause Title:** *Amit Kumar Kejriwal v. UCO Bank*  
**Case No.:** Company Appeal (AT) (Ins) No. 1775 of 2024

**Writ Petition Challenging Termination by Private Institute Not Maintainable Without Public Law Element: Rajasthan High Court**

The Rajasthan High Court has held that a writ petition challenging termination of service by a private institute is not maintainable in the absence of any public law element, even if the institute is engaged in activities of public importance such as health or education.

The Court was dealing with a writ petition filed by an employee of the Indian Institute of Health Management Research, who had assailed his termination order and sought reinstatement with consequential benefits. At the threshold, the respondent raised a preliminary objection regarding the maintainability of the petition under Article 226 of the Constitution.

The petitioner contended that the Institute was working in the field of public health management and was discharging public functions. On this basis, it was argued that the Institute fell within the ambit of “State” under Article 12 of the Constitution and was therefore amenable to writ jurisdiction.

The respondent opposed the petition by submitting that the Institute was a society registered under the Societies Registration Act and was not a statutory authority. It was argued that mere discharge of public functions would not convert a private body into “State” under Article 12, particularly when the dispute arose out of a purely private service contract.

After hearing the parties, the Single Judge Bench of Justice Praveer Bhatnagar examined the distinction between public duty and private service disputes. The Court relied upon the decision of the Supreme Court of India in *Army Welfare Education Society v. Sunil Kumar Sharma & Ors.*, wherein it was held that although imparting education involves a public duty, the relationship between a private institution and its employees remains



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contractual. A breach of such a private contract, the Supreme Court had observed, does not involve any public law element so as to attract writ jurisdiction.

Applying the above principles, the Rajasthan High Court held that the termination of the petitioner was rooted in a private employer–employee relationship and was not governed or controlled by any statutory provisions. The absence of a public law element rendered the writ petition under Article 226 not maintainable.

Accordingly, the Court dismissed the writ petition, leaving the petitioner to avail such alternative remedies as may be available in law.

**Cause Title:** *Atal Khandelwal v. Institute of Health Management Research*  
**Case No.:** S.B. Civil Writ Petition No. 10690 of 2008

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