

In order to engage with our readers and simplify the legal complexities of the infrastructure sector, EPC World has partnered with Rajani Associates, a full-service law firm for a series of legal Q&As. Through this Legal Q&A column, SHISHAM PRIYADARSHINI, Partner, Rajani Associates and AMISH SHROFF, Associate Partner, Rajani Associates, will endeavour to address the queries and challenges faced by our readers.



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What is the EBRD?

EBRD is an abbreviation for the European Bank for Reconstruction and Development (EBRD). EBRD with its headquarter in London, is an international financial institution (ie, an institution established by more than one country) set up on April 15, 1991 with an objective to promote private and entrepreneurial initiatives. EBRD is now owned by 69 countries, including two European Union (EU) institutions. The 69th country being India which was recently added in the list in July 2018 after the board of governors, which represents all the existing shareholders, voted unanimously, in favour of the application made by India in March 2018. Each shareholder has made a capital contribution, which forms core funding of EBRD. Currently, Sir Suma Chakrabarti, born in India, is the sixth President of EBRD serving his second four-year term in the office.

What are the area of operations of the EBRD?

EBRD is not a retail bank and do not offer the conventional commercial products such as mortgages and bank accounts. Amongst other services and products, the EBRD offers various forms of financing to undertake different types of projects. Besides project financing, EBRD also offers and supports business advisory services for the smooth undertaking of the projects. Despite shareholders being the member countries, EBRD heavily invests in private enterprises, together with commercial partners. The private sector projects financed by EBRD generally ranges from USD

5 million to USD 250 million. As per the official record, it has invested over Euro 120 billion in more than 5,000 projects, across various countries.

Which are the projects financed by the EBRD?

The investment made by EBRD is in varied sectors like energy efficiency projects, agribusiness, networks, platforms and service providers in the Information and communication technologies sector, manufacturing and municipal services infrastructure, natural resources industries, nuclear safe treatment of waste and power plants, power and energy and transport systems.

What are the types of funding available from EBRD?

The EBRD offers a wide range of financial instruments. The main forms of direct financing that the EBRD offers are loans, equity and guarantees. As far as the loans are concerned, the same are tailored with a high degree of flexibility to meet the specific requirements of a client and project, wherein, the credit risk may be taken entirely by the EBRD. In the equity investment segment, the EBRD uses innovative approaches and instruments (such as ordinary shares, preference shares, debentures, quasi equity instruments, to list a few) to invest in the project special purpose vehicle (SPV). Such investments are done by EBRD as a minority stakeholder in the SPV with an assured return on investment and a clear exit strategy. The EBRD also participates in investment funds, which in turn invest in medium-sized companies which need to expand their business. Besides financing through loan and equity arrangement, the EBRD also provides guarantees to help borrowers have access to financing through the Trade Facilitation Programme which is being run by it since 1999 with an aim to promote foreign trade to, from and amongst the EBRD countries of operations and offers a range of products to facilitate this trade; provide guarantees to international confirming banks, taking into account the political and commercial payment risk of international trade transactions undertaken by banks in the countries of operations (the issuing banks); provide short-term loans to selected banks and factoring companies for lending to local exporters, importers and distributors; guarantee any genuine trade transaction to,

from and amongst the countries of operations; and strengthen the ability of local banks to provide trade financing and through these banks give the entrepreneurs throughout the countries of operations support, which they need to increase their access to their import and export trade.

Whether there are any minimum requirements to be eligible for EBRD involvement, as far as financing and rendering advisory services for the project is concerned?

Yes, there are certain requirements to be eligible for EBRD involvement, as far as financing and rendering advisory services for the project is concerned. Any prospective member client (from the list of 69 countries and institutions) who requires fund for its project has to demonstrate that its proposed project or business is meeting a strict and clear set of criteria thereby being eligible to be considered for EBRD involvement. There are essentially three eligible requirements to receive EBRD assistance. Firstly, the project or business should be located in one of the EBRD's countries of operations. Secondly, in the event assistance relates to subsidies, sponsorship or donations, then, the EBRD does not offer any donation or support, as the funds made available to the EBRD (by its shareholders) are public funds specifically directed to support investment projects. Lastly, EBRD does not render assistance if the project is in relation to the defense related activities, tobacco, substances banned by international law or gambling facilities. Additionally, EBRD may not finance certain products or processes due to their environmentally harmful nature or if adverse impact cannot be adequately mitigated by the project SPV. However, it may be noted that the fulfilment of the above three criteria do not mean that a project SPV of a member country has been approved for investment by EBRD. It simply means that the key criteria are met by the proposed project SPV for further consideration and approval of the EBRD to receive its assistance and funding.

What are the factors taken into consideration to process the application, once a project SPV of member country has fulfilled the three key criteria?

While processing the application, the EBRD takes into consideration certain factors like prospect and profitability of the project; the equity contribution (cash or in kind) of the project sponsor in the project SPV; the benefit that the local economy would derive from the proposed project and the

environmental standards of the EBRD as well as those of the host country.

What is the significance of India becoming a stakeholder in the EBRD?

After completing the formal membership process and purchasing shares, India has become a shareholder of EBRD just like the other member countries. However, India will not be a recipient of EBRD financing for its domestic projects. In the past, the EBRD has worked with several Indian companies, such as Tata, Mahindra, SREI and Jindal, on investments in the member countries, with the value of such joint projects worth an estimated 1 billion Euro. A recent example of this cooperation is in Turkey where the EBRD and Mahindra & Mahindra are both shareholders in Turkish agricultural machinery manufacturer. With India now being a shareholder in the EBRD, it is expected that the scope of these joint initiatives between the EBRD and India will be enhanced, benefiting the concerned stakeholders. Pursuant to the membership, the EBRD recently held its inaugural business forum in Mumbai. The conference, co-hosted with the Federation of Indian Chambers of Commerce and Industry (FICCI) and with the support of the Export-Import (EXIM) Bank of India, was held under the banner of "Mobilising private sector finance in the EBRD region and how Indian companies can benefit". The EBRD is also working closely with leading Indian organisations, such as the Confederation of Indian Industry (CII), the Associated Chambers of Commerce & Industry of India (ASSOCHAM), and the International Solar Alliance (ISA).

While India will not be receiving financing from the EBRD, it will benefit from the expertise and support of the EBRD for various projects in the member countries and will be able to leverage the technical assistance and sectoral knowledge of the EBRD for the benefit of private sector. India's membership would also enhance India's international profile and open up various other co-investment prospects with EBRD, in the regions of operation (such as Central Asia, Egypt and Jordan) of EBRD. The membership will also promote overall economic interests of India and provide access to EBRD countries of operation, international markets in terms of business opportunities, procurement activities and consultancy assignments. The increased economic activities would generate employment opportunity in India and would also enable Indian nationals to explore employment options in the EBRD and its member countries. EPCWorld