

## Corpsec Hotline

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### INDIAN DEBT MARKET - READY TO FLY HIGH!!!

What can be more conducive to the maturity of the Indian corporate debt market than recent notification of Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 ("Debt Regulations / Regulations")? Notified by SEBI in the month of June, 2008, after announcing a **consultative paper** and inviting public comments to the same in the month of January, 2008 the Debt Regulations have repealed the provisions of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("DIP Guidelines") in so far as they related to issuance and listing of Debt Securities. This comes much to the relief of the primary debt market which has been a less preferred choice due to the lack of sound reforms in that segment.

#### Position before these Debt Regulations

Prior to these Regulations, every public issue<sup>1</sup> of Debt Securities had to adhere to the extensive disclosure requirements and lengthy time-line as prescribed under the DIP Guidelines. Draft offer documents were required to be filed with SEBI at least 30 days before filing the same with the Registrar of Companies ("ROC") for SEBI's comments and were further mandated to be made public for 21 days inviting public comments. Over and above that, disclosure requirements under Chapter VI of the DIP Guidelines coupled with onerous requirements including multiple certification from merchant bankers, numerous intermediaries, post issue advertisements, etc. discouraged the issuer from accessing the public debt market. To add on to that, the DIP Guidelines contained no mechanism for listing of privately placed securities<sup>2</sup>. These issues and many more, were what prompted SEBI to come out with these Debt Regulations.

#### Key highlights of Debt Regulations

- These Regulations govern issue and listing of only non-convertible debt securities including debentures and bonds but excludes bonds issued by Government, security receipts and securitized debt instruments ("Debt Securities").
- The disclosure requirements have been diluted significantly, as provided below, and the requirement to file an offer document with SEBI has been done away with for private placement of Debt Securities. In case of public issue, the offer document needs to be filed with SEBI for record purposes only. This is a welcomed step as it does away with duplication in disclosures and onerous procedures as provided in the DIP Guidelines and Securities Contracts (Regulations) Rules, 1957.
- The Debt Regulations provide an enabling mechanism for listing of Debt Securities issued on a private placement basis, and this appears to apply even in cases where the equity shares of the issuer are not listed on any stock exchanges.
- The issuer is free to determine the price of the Debt Securities in consultation with the lead merchant banker.
- Introduction of book building process for determining the price of the Debt Securities in case of public issue of shares. This is optional on the part of issuer and the procedure for the same is yet to be issued by SEBI.
- The issuer may decide the amount of minimum subscription which it seeks to raise in case of public issue of Debt Securities. Failure on the part of issuer to raise minimum subscription would make it liable to refund all application monies received from public.
- Issuance of Debt Securities through on-line system of the stock exchanges, subject to compliance with necessary procedures as may be prescribed by SEBI, has been introduced.
- The intervention of SEBI in the entire offer and listing process has been minimised and more reliance has been placed on due diligence and certificates provided by the merchant bankers and debenture trustees.
- These Regulations have relaxed the requirement to have minimum public shareholding in case of privately placed Debt Securities<sup>3</sup>.
- Electronic dissemination of information including displaying the draft and final offer document on the website of stock exchanges, have been provided for. This would reduce the cost of posting the physical copies of the offer documents to the public investors.
- The proceeds of issuance of debt securities cannot be used for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management.

While public issue and listing of Debt Securities have been revamped and simplified to a great extent as compared to the DIP Guidelines, introduction of enabling mechanism to list privately placed Debt Securities has been an added flavour of these Regulations.

#### Public issue v/s private placement of Debt Securities under Debt Regulations – Synopsis

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	Public issue	Private placement
<b>Listing of Debt Securities</b>	Mandatory	Optional
<b>Offer Document</b>	Draft offer document to be filed with the stock exchange before opening of offer and to be made public for a period of 7 working days seeking public comments.  Draft and final offer document should also be filed with SEBI (only for record purposes), the stock exchange and the ROC.	Filing of offer document not required
<b>Credit rating</b>	To be obtained from at least 1 rating agency. In case of more than 1 credit ratings, all ratings to be disclosed in offer document.	To be obtained from 1 rating agency. No provision for disclosure of all the ratings in case of more than 1 credit rating.
<b>Disclosures</b>	Offer document to contain the following disclosures: - disclosures mentioned in Schedule II of the Companies Act; - disclosures mentioned in Schedule I of Debt Regulations; - all information necessary to enable the investors take an informed decision.	Only those disclosures as mentioned in Schedule I of these Regulations need to be made by the issuer. The disclosures are to be accompanied by the latest annual report of the issuer.
<b>Pre issue Advertisement</b>	To be issued as per the prescribed format in any national daily on or before issue opening date.	Not mandatory
<b>Appointment of intermediaries</b>	Issuer to appoint one or more merchant bankers and debenture trustees.	Not mandatory
<b>Trust deed</b>	Trust deed to be executed with the debenture trustee within 3 months from the date of closure of issue.	Not mandatory
<b>Due diligence Certificates</b>	To be provided by lead merchant bankers and the debenture trustee/s to SEBI before opening of issue.	Not mandatory
<b>Security</b>	Not mandatory	Not mandatory

Whilst the Regulations seem to be comprehensive enough, there are, however, a few questions which still remain unanswered – Since, it appears that no trading restrictions are imposed on privately placed and listed Debt Securities, what would be the implications if, pursuant to such trading, the number of holders of Debt Securities ultimately exceed 50? What is the basis of allotment in case of over subscription of Debt Securities on public issue? Though these issues need to be adequately addressed by the SEBI, it is, nevertheless, a commendable fact that much of the required framework to bring about a radical transformation in the primary debt market has been laid out in the Debt Regulations. This would not only benefit the issuers by making available easier avenues for raising debts rather than the traditional borrowings from banks / financial institutions, but would also equally benefit the investors by providing them access to a vibrant and matured corporate debt market.

1. “public issue” means an offer or invitation by an issuer to public to subscribe to the Debt Securities which is not in the nature of a private placement (defined in footnote 2)
2. “Private placement” means an offer or invitation to less than 50 persons to subscribe to the Debt Securities in terms of Section 67(3) of the Companies Act, 1956.
3. Sub-rule (2)(b) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957.

Sources: Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008

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