# SEBI moves to consolidate regulatory framework dealing with issuance and listing of debt securities and non-convertible preference shares

In a move to streamline the regulatory framework dealing with issuance and listing of debt securities and non-convertible preference shares, SEBI has issued a consultation paper proposing consolidation of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (**ILDS Regulations**) and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (**NCRPS Regulations**) into a single regulation to be named as SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (**NCS Regulations**).

The proposed shift to a single regulation is expected to ensure that there is ease of reference and language and also remove redundancies which would entail following objectives:

- To simplify and to align the existing regulations in line with the various circulars/guidance and various provisions of the regulations, issued by SEBI and improve the structure of the regulations in order to enhance readability;
- To identify policy changes in line with the present market practices and the prevailing regulatory environment and to ease doing business;
- To separate the chapters on the basis of type of issuance- public/private placement and instruments- debt securities/NCRPS/PNCPS/PDIs/Commercial Papers, so that all relevant information is sorted and are available at one place;
- To align the regulations with the amendment in the Companies (Share Capital and Debentures) Rules, 2014 and Companies (Prospectus and Allotment of Securities) Rules, 2014 etc.;
- To merge all the existing circulars into a single operational circular.

Key proposals have been analyzed below.

| Proposal | Rationale |
|---|---|
| Consolidation of definitions | ▪ There are multiple definitions which have not been defined under extant ILDS Regulations and NCRPS Regulations but have been defined across multiple sources like SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**), Companies Act, 2013 etc. as well as Circulars issued under ILDS/NCRPS Regulations.<br>▪ It is proposed to include definitions of such terms in the NCS Regulations as it explains the terms and makes for better readability. |
| Disclosure of parameters for identification of risk factors | ▪ Presently, the ILDS Regulations and NCRPS Regulations require disclosure of risk factors to be made but does not lay down any parameters for identification of risk factors.<br>▪ The ICDR Regulations provide comprehensive parameters for identification of risk factors such as risks intrinsic to the issuer, security, other risk factors which may have an impact on the issue, security, etc. A similar provision is proposed to be included in the NCS Regulations. |
| Removal of minimum rating of AA-for public issuance of NCRPS | ▪ The credit rating for any issue is done by the independent Credit Rating Agencies and the same is disclosed along with the rationale in the offer document; hence investors are made fully aware of the credit worthiness of the issuer. The issuer is allowed to raise funds through issuance of debt securities irrespective of the credit rating.<br>▪ NCRPS Regulations presently restricts issuers with credit rating of less than AA- to come out with a public issue. Such restriction is not applicable even in other debt instruments such as municipal debt securities, securitized debt instruments. Hence, it |

| Proposal | Rationale |
|---|---|
| | is proposed to do away with such minimum rating. |
| **Removal of minimum tenure of 3 years for public issuance of NCRPS** | ▪ There is no requirement of minimum tenure specified in case of public issue of debt securities, municipal debt securities, securitized debt instruments. The requirement of minimum tenure of three years for public issue of NCRPS restricts the flexibility of the issuers to structure their issuance as per their resource requirement and raise funds through an issue of NCRPS. Hence, it is proposed to remove such requirement. |
| **Removal of restriction of 4 issuances in a year through a single shelf prospectus** | ▪ The ILDS Regulations provide that not more than four issuances can be made under a single shelf prospectus while there is no such restriction under the Companies Act, 2013.<br>▪ Since the legislation already restricts the validity of a shelf prospectus to one year, a further granular restriction of the number of issuances may not be needed. It is proposed to remove such restriction. |
| **Applicability of call and put option in case of debt securities in private placement basis and issuances of NCRPS** | ▪ The ILDS Regulations lay down the procedure to exercise call and put option in case of debt securities issued on public issue basis.<br>▪ It is proposed to extend the said provisions to issuances on private placement basis and also for NCRPS for both public issue and private placement basis. |
| **Reduction of period for exercise of call and put option** | ▪ The ILDS Regulations provide an option to an issuer to exercise the option to recall debt securities prior to maturity and an option to the investor to exercise the put option to redeem debt securities prior to maturity.<br>▪ However, such option can be exercised only after 24 months of issuance of debt securities which restricts the issuer or investor for a considerable period of time.<br>▪ It is proposed to reduce the same to 12 months to provide increased flexibility. |
| **Validity of shelf placement memorandum** | ▪ The shelf prospectus in case of public issue is valid till one year, whereas the shelf placement memorandum (i.e. shelf disclosure document) issued in case of private placement is valid for 180 days.<br>▪ In order to maintain consistency, it is proposed that the validity of shelf placement memorandum be revised to 1 year. |
| **Allowing issuers to file shelf prospectus post curing of default** | ▪ One of the conditions for an issuer to be eligible to issue shelf prospectus is to have not defaulted in payment of interest/dividend/redemption amount in last three financial years.<br>▪ It is proposed to allow issuers to file shelf prospectus provided they have cured the default at least 30 days prior to filing the draft shelf prospectus. |
| **Requirement of distributable profit replaced by Operating profit** | ▪ One of the conditions for an issuer to be eligible to issue shelf prospectus for issuance of debt securities is to have consistent track record of distributable profit during the last three years before such issue.<br>▪ It is proposed to provide for a more measurable metric in the form of 'operating profit' instead of distributable profit, similar to the lines with the provisions in the ICDR Regulations. |
| **Removal of requirement of physical copy of offer** | ▪ Presently, ILDS Regulations requires issuer and merchant banker to provide physical copy of offer document to any person who makes request of the same. Since the offer document are uploaded in the website of issuer, merchant banker, SEBI stock |

| Proposal | Rationale |
|---|---|
| document | exchanges, investors can access the document.<br>▪ It is proposed to do away with requirement of providing physical copy of offer document, in line with ICDR Regulations. |
| Removal of requirement of minimum issue size for debt securities | ▪ Presently, the minimum issue size for a public issue of debt securities is INR 100 crore. There is no minimum public issue size for NCRPS, securitized debt instruments, or municipal debt securities.<br>▪ It is proposed that the requirement of minimum size, presently applicable only for debt securities, may be removed. |
| Abridged Prospectus to be shortened with defined font size | ▪ Presently the abridged prospectus runs to around 50 pages and is printed on very small font size, which makes it difficult to read, vitiating its very purpose.<br>▪ The new abridged prospectus for NCS is expected to be around 10 pages and in font size 11, which will greatly enhance the readability. |
| Introduction of format of Application form for public issue of NCRPS | ▪ While the format of the application form has been prescribed for debt securities, there is no similar prescription for NCRPS. Hence the same is proposed to be prescribed on the lines of the format existing for an issue of debt securities. |
| Applicability of the Electronic Book Provider (EBP) platform | ▪ The EBP platform, which is a price discovery mechanism for privately placements is presently applicable for private placements of debt securities of INR 200 crore and above in a financial year.<br>▪ It is proposed that the EBP platform shall be mandatory for issuance of eligible securities proposed to be listed amounting to INR 100 crore or above in a financial year. |
| Revision in timelines for upload of placement memorandum on EBP Platform | ▪ The present timeline for filing a placement memorandum on the EBP platform is two working days before the issue opening date.<br>▪ The timeline is proposed to be revised to 5 working days in the operational circular. |
| Minimum subscription of 75% for public issue of debt securities and NCRPS | ▪ The present ILDS Regulations, through a circular provides for minimum subscription in case of public issue of debt securities. However, there is no corresponding requirement for an issue of NCRPS. Hence the same is proposed to be included for public issues of NCRPS and debt securities in the NCS Regulations. |
| Deletion of Continuous listing conditions in ILDS which are already covered under LODR Regulations | ▪ Regulation 23 (2), (3) and (4) of ILDS Regulations requires disclosure of revision of rating and disclosure on websites which are in the nature of continuous listing conditions already prescribed in the LODR Regulations and hence are proposed to be removed from the NCS Regulations. |
| Inclusion of Disclosure of Cash Flow in offer document in case of NCRPS | ▪ The disclosure of cash flows in the offer document, presently prescribed for debt securities, enables prospective investors to get an idea on actual date of future interest and redemption payment. The same has relevance to NCRPS also as this will enable them to get an idea on actual date of future dividend and redemption payment and it is proposed to be made applicable for NCRPS issues too. |
| Inclusion of enabling provision for Recovery | ▪ SEBI has issued a circular casting an obligation on issuers of debt securities for creation of recovery expense fund. The enabling provision is needed in the regulations for issue |

| Proposal | Rationale |
|---|---|
| expense fund | of debt; the same has accordingly been incorporated in the NCS regulations. |
| Provisions of Advertisements aligned with ICDR Regulations | ▪ The ICDR contains detailed provisions on issue related advertisements which are comprehensive, including restrictions on use of models, soliciting investments and product advertisements. Similar requirements have been incorporated in the NCS Regulations. |
| Harmonization of provisions on creation of charges with the Companies Act | ▪ The creation of charge on the assets and properties of the issuer under the NCS Regulations has been aligned with the Companies Act which states that the issuer shall have option to create over the properties or assets (movable, immovable, tangible, intangible), shares or any interest thereon, of the issuer or its subsidiaries or its holding companies or its associate companies.<br>▪ Further the requirement of creating charge on assets or properties which is sufficient for the due repayment of the amount of debt securities and interest thereon has been included from the Companies (**Share Capital and Debentures**) Rules, 2014. |
| Consolidation and reissuances of debt securities may be made applicable for public issue of debt securities | ▪ ILDS Regulations provides consolidation of debt securities issued on private placement basis and further also provides enabling framework for reissuances of debt securities in the existing ISIN. The limits are to reduce fragmentation of the debt market. It is proposed to extend the provision of consolidation and reissuances for debt securities issued on public issue basis. |
| Deletion of requirement of allotment to be made within thirty days | ▪ Regulation 12A of ILDS Regulation provides that in case of listing of debt securities issued to public, allotment of securities offered to public shall be made within 30 days of the closure of the public issue. However, SEBI vide Circular dated August 16, 2018 has mandated that the allotment of debt securities, NCRPS issued to public shall be made within 6 working days from the closure of the issue. Hence this provision regarding allotment within 30 days in the ILDS regulation is being deleted. |
| Clarification regarding basis of allotment in public issuances | ▪ SEBI vide circular dated October 29, 2013 mandated that on the date of oversubscription, the allotments should be made to the applicants on the proportionate basis.<br>▪ It is proposed to be clarified in the operational circular that the allotment on the proportionate basis shall be made from the date of the oversubscription till the date issue remains open. |
| Definition of Debt securities to include fixed maturity period | ▪ Debt securities and perpetual debt instrument although being separate instruments are used interchangeably by market participants.<br>▪ In order to differentiate between perpetual debt instrument and debt securities, the definition of debt securities has been modified to include fixed maturity period. |
| Introduction of fee for filing exemption application | ▪ It is proposed to introduce a fee of INR 1 lac for filing exemption application from strict enforcement of certain provisions under NCS Regulations in line with other regulations such as ICDR Regulations and LODR Regulations. |
| Inclusion of provision of e-voting | ▪ Regulation 18 of ILDS Regulation provides that in case issuer wishes to roll over the debt securities, the voting of debenture holders may be taken through postal ballot. It is proposed that the provision of e-voting may be included in addition to postal ballot in order to help issuers ease to obtain voting for passing the resolution. |
| Disclosure of tax litigation modified to | ▪ Schedule I of ILDS Regulation and NCRPS Regulation requires disclosure of tax litigation resulting in material liabilities. Disclosure of all litigation being material are important |

| Proposal | Rationale |
|---|---|
| include material litigation | (whether tax or non-tax) for investor decision to invest. Hence it is proposed to modify the tax litigation to material litigation. |
| Disclosure by Debenture trustee to be moved to SEBI (Debenture Trustee) Regulations, 1993 | ▪ Regulation 23(5) of ILDS Regulations provides for certain disclosure by Debenture trustee regarding default by issuer, failure to create charge and revision of rating. These disclosures have been mandated by SEBI Circular dated November 12, 2020. Since the disclosures by Debenture trustee shall be at single place, hence these provisions are proposed to be deleted from ILDS Regulations and moved to DT Regulations. |
| Restriction to issuer for listing non-convertible securities issued on private placement basis | ▪ It is proposed that if the promoter, director, promoter group or the issuer has been debarred, then such issuer shall not be allowed to list non-convertible securities issued on private placement basis. |
| Restriction for public issue of NCRPS | ▪ The present NCRPS Regulation provides that the issuer who has defaulted in payment of interest shall not be allowed to make public issue, however, in case issuer has defaulted in payment of dividend, then such issuers are allowed to make public issue of NCRPS.<br>▪ It is proposed that in case issuer fails to make payment of dividend, then such issuer shall not be allowed to make a public issue of NCRPS, till such time the default in payment of dividend is cured. |
| Appointment of Debenture Trustee | ▪ The ILDS Regulations provide for the appointment of a Debenture trustee for public issuance of debt securities. While there is no explicit requirement for the appointment of debenture trustee for a private placement of debt securities, certain requirements are mandated to be complied by debenture trustee in case of listed debt securities, whether issued on a private or public basis; this has led to debenture trustees being appointed for private placements also.<br>▪ Hence it is proposed to mandate the appointment of a debenture trustee even for private placements of debt securities which are proposed to be listed. |
| Restriction on fugitive economic offenders from accessing the securities markets | ▪ The ICDR Regulations and SEBI (Substantial Acquisition of Shares and Takeovers), Regulations, 2011 restrict fugitive economic offenders from accessing securities markets during the period of debarment. However, ILDS Regulations and NCRPS Regulations do not contain such restriction. It is proposed to include this restriction in NCS Regulations. |

The detailed proposals and recommendations for the framework of issuance and listing of debt securities and non-convertible preference shares are provided under the SEBI Consultation Paper on Review and Merger of ILDS Regulations and NCRPS Regulations dated May 19, 2021 (available here). The draft NCS Regulations are provided in **Annexure B** of the consultation paper. Public comments to be provided within 21 days from May 19, 2021.

We hope you have found this information useful. For any queries/clarifications please write to us at insights@elp-in.com or write to our authors:

**Manendra Singh, Associate Partner – Email** – manendrasingh@elp-in.com

**Tanvi Goyal, Principal Associate – Email** – tanvigoyal@elp-in.com