



February 2023

## Amendments to SEBI regulations on issue and listing of non-convertible securities

### Introduction

The Securities and Exchange Board of India (“SEBI”) has amended the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“NCS Regulations”) by way of the SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2023 (“NCS Amendment Regulations”). The amendments are effective from February 2, 2023.

Pursuant to the NCS Amendment Regulations, SEBI has (a) expanded the definition of green debt securities, (b) prescribed the manner of service of notices in relation to recall or redemption of non-convertible securities prior to maturity, (c) mandated the amendment to the articles of association (“AoA”) of the issuer entity for appointment of a nominee director and required such appointment to be made within 1 (one) month of nomination by the debenture trustee, (d) prescribed the minimum and maximum period of subscription for public issues of debt securities and non-convertible preference shares, and (e) prescribed the payment of non-refundable regulatory fees for issuance of perpetual debt instruments, perpetual non-cumulative preference shares and other similar instruments. The key changes introduced by the NCS Amendment Regulations are discussed below.

### Key Changes

#### 1. Expansion of the definition of ‘green debt security’

The definition of ‘green debt security’ has been widened to also include the debt securities issued for the following purposes:

- (a) pollution prevention and control (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention, reduction and recycling, and energy or emission efficient waste to energy) and sectors specified under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change;
- (b) circular economy adapted products, production technologies and processes (such as the design and introduction of reusable, recyclable and refurbished materials, components and products, circular tools and services) and/or eco efficient products;
- (c) blue bonds, *i.e.*, funds raised for sustainable water management including clean water and water recycling, and sustainable maritime sector including sustainable shipping, sustainable fishing, fully traceable sustainable seafood, ocean energy and ocean mapping;

- (d) yellow bonds, *i.e.*, funds raised for solar energy generation along with upstream and downstream industries associated with it; and
- (e) transition bonds, *i.e.*, funds raised for transitioning to a more sustainable form of operations in line with India's intended climate targets under the Paris Agreement at the CoP 21 in 2015 and at the CoP 26 in 2021, as revised from time to time.

## 2. **Serving notice for recall or redemption of non-convertible securities prior to maturity**

Issuers of non-convertible securities ("**Issuer(s)**") are now required to send notice for recall or redemption prior to maturity of non-convertible securities to all eligible holders and the debenture trustee at least 21 (twenty-one) days prior to the date on which such right is exercisable as follows:

- (a) a soft copy has to be sent to all eligible holders who have registered their email address either with the Issuer or with any depository; and
- (b) a hard copy has to be sent to all eligible holders who have not registered their email address either with the Issuer or with any depository.

Further, Issuers are also required to simultaneously provide a copy of such notice of recall or early redemption to each stock exchange where the non-convertible securities of the Issuer are listed, for dissemination on the website of the stock exchange.

Prior to the NCS Amendment Regulations,

- (a) the NCS Regulations were silent on the manner in which such notice of recall or early redemption had to be circulated to eligible holders; and
- (b) along with providing a copy of the notice of recall or early redemption to the stock exchange, issuers were also required to make an advertisement in an English daily newspaper and regional daily newspaper having wide circulation at the place where the registered office of the Issuer was situated, indicating the details of the right to recall or redeem and eligibility of holders entitled to avail such right. However, this requirement has now been removed.

## 3. **Provisions in the debenture trust deed and AoA regarding nominee directors**

Mandatory provision in debenture trust deeds:

- (a) As per the SEBI (Debenture Trustee) Regulations, 1993 ("**Debenture Trustee Regulations**"), it is the duty of every debenture trustee to appoint a nominee director on the board of directors of an Issuer in case of (i) 2 (two) consecutive defaults in payment of interest, (ii) default in security creation for the debentures, or (iii) default in redemption of debentures.
- (b) The NCS Amendment Regulations now require that all debenture trust deeds must contain a provision mandating the Issuer to appoint the person nominated by the debenture trustee to be the nominee director of the Issuer (in line with the Debenture Trustee Regulations) at the earliest and no later than 1 (one) month from the date of receipt of nomination from the debenture trustee.
- (c) Further, Issuers whose debt securities are already listed as on February 2, 2023, are required to amend their existing debenture trust deeds on or before September 30, 2023, to incorporate the above mentioned requirements with respect to nominee directors.

Mandatory provision in AoA:

- (a) Issuers which are companies are now required to ensure that their AoA require the board of directors to appoint the nominee director nominated by the debenture trustee (in line with the Debenture Trustee Regulations) as a director on the board.

- (b) Existing Issuers whose debt securities are already listed as on February 2, 2023 are required to amend their AoA on or before September 30, 2023 to incorporate the above mentioned requirement with respect to nominee directors.
- (c) SEBI has clarified that first time Issuers will get a period of 6 (six) months from the date of listing of their debt securities to amend their AoA. Stock exchanges have also been advised to take an undertaking to this effect from such first-time issuers at the time of granting in-principle approval for listing.

**Timeline for appointment in case of existing defaults in payment of interest or principal:**

For Issuers who are in default of payment of interest or principal as on February 2, 2023, SEBI has prescribed that such Issuers must appoint the nominee director nominated by the debenture trustee on their board within 1(one) month from the later of: (a) the date of receipt of nomination from the debenture trustee and (b) February 2, 2023 (i.e., the date of publication of the NCS Amendment Regulations).

**4. Period of subscription in case of public issue**

The following new provisions with respect to the time period for subscription in case of public issues of debt securities or non-convertible redeemable preference shares have been introduced:

- (a) A public issue of debt securities or non-convertible redeemable preference shares is required to be kept open for a minimum of 3 (three) working days and a maximum of 10 (ten) working days.
- (b) If there is a revision in the price band or the yield, the Issuer is required to extend the bidding / issue period disclosed in the offer document for a minimum period of 3 (three) working days. However, the overall bidding period cannot exceed 10 (ten) working days.
- (c) In instances of force majeure, banking strikes or similar circumstances, the Issuer may (for reasons to be recorded in writing) extend the bidding / issue period disclosed in the offer document. However, the overall bidding / issue period cannot exceed 10 (ten) working days.

**5. Payment of regulatory fee by Issuers of perpetual instruments**

For issuances of perpetual debt instruments, perpetual non-cumulative preference shares and other similar instruments, Issuers are now required to pay designated stock exchanges a non-refundable regulatory fee of 0.00025% of the issue size, subject to a minimum of INR. 25,000 (Indian Rupees twenty-five thousand) and a maximum of INR. 50,00,000 (Indian Rupees fifty lakh) at the time of listing of such instruments.

**JSA Comment**

The expanded definition of 'green debt security' is in line with the updated Green Bond Principles issued by the International Capital Market Association. The expanded definition, which now includes yellow, blue and transition bonds, provides further clarity on which activities will be considered as 'green' and environmentally viable, and thereby encourage sustainable finance in such areas.

Further, the introduction of a finite time-period of 1 (one) month for appointing nominee directors nominated by debenture trustees and the requirement of ensuring that debenture trust deeds and the AoA of Issuers contain such a provision and right, is beneficial for debenture trustees who will have greater and swifter visibility on the management of affairs of the Issuer.

Currently, the debenture trustee only has the statutory right to appoint a nominee director on the board of the Issuer. The debenture trustee does not have a statutory right to appoint a nominee director on the boards of any other obligors or group companies that are guarantors or security providers if there is a default in creation of security. SEBI could consider providing such a statutory right to debenture trustees to assist in the enforcement of any guarantees or security provided by such obligors or group companies.

## Finance Practice

JSA has a widely recognised market leading banking & finance practice in India. Our practice is partner led and is committed to providing quality professional service combining domain knowledge with a constructive, consistent, comprehensive and commercial approach to issues. Clients trust our banking lawyers to take a practical and business-oriented approach to achieving their objectives. Our lawyers have a clear understanding of the expectations and requirements of both sides to a financing transaction and provide tailored advice to each client's needs. The practice is especially praised for its accessibility and responsiveness and its ability to work well with international firms and clients. We represent a variety of clients including domestic and global banks, non-banking finance companies, institutional lenders, multi-lateral, developmental finance and export credit institutions, asset managers, funds, arrangers and corporate borrowers in different sectors on a wide range of financing transactions.

Our full spectrum of services includes advising clients on corporate debt transactions (including term and working capital debt), acquisition finance, structured finance, project finance, asset finance, real estate finance, trade finance, securitisation, debt capital markets and restructuring and insolvency assignments.

Our practice has been consistently ranked in the top-tier for several years, and several of our partners are regarded highly, by international publications such as Chambers and Partners, IFLR, Asia Law, Legal 500, Asia Legal Business, IBLJ and Leaders League.

This Prism has been prepared by:



**Aashit Shah**  
Partner



**Tirthankar Datta**  
Partner



**Megha Upadhyaya**  
Senior Associate



**Iyotirmoy Nath**  
Associate



17 Practices and  
24 Ranked Lawyers



16 Practices and  
11 Ranked Lawyers



7 Practices and  
2 Ranked Lawyers



11 Practices and  
39 Ranked Partners  
**IFLR1000 APAC Rankings 2022**

-----  
Banking & Finance Team  
of the Year

-----  
Fintech Team of the Year

-----  
Restructuring & Insolvency  
Team of the Year



Among Top 7 Best Overall  
Law Firms in India and  
10 Ranked Practices

-----  
13 winning Deals in  
IBLJ Deals of the Year

-----  
10 A List Lawyers in  
IBLJ Top 100 Lawyer List



Banking & Financial Services  
Law Firm of the Year 2022

-----  
Dispute Resolution Law  
Firm of the Year 2022

-----  
Equity Market Deal of the  
Year (Premium) 2022

-----  
Energy Law Firm of the Year 2021



**Ranked #1**  
**The Vahura Best Law Firms to**  
**Work Report, 2022**

-----  
Top 10 Best Law Firms for  
Women in 2022

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi

This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.