(STRICTLY PRIVATE & CONFIDENTIAL)

Note on Private Placement of Debt

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Introduction

Over the years, privately placed debts have emerged as an important source of long-term financing for Indian corporates and also as a major alternate source of funds for corporate entities to bank credit and loans from other financial institutions. In terms of value, private placements are only second to bank financing. In view of the underdeveloped public issue segment of the bond market and space left by development finance institutions, a company's reliance on private placements for long-term financing has increased. A company prefers private placements over public issues due to reduced regulatory and compliance costs and with enhanced time flexibilities.

What is Private Placement?

Private Placement means any offer of securities or invitation to not more than 200 persons to subscribe securities to a select group of persons by a company through issue of a private placement offer letter. Unlike a public offering, private placement is exempt from filing an offer document with the Securities and Exchange Board of India (SEBI) for its comments. Further it may not involve any form of general announcement, general solicitation, advertising, any seminar or meeting whose attendees have been invited by a general solicitation or advertisement.

Issuance of Debt

Presently, issue of securities through private placement route are governed by Companies Act, 2013. Issuer of debt has to file Private Placement Offer Letter to ROC after relevant Board Resolution has been obtained. For the redemption of the debt securities issued by a company, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 2013. The issuer shall allot its securities within 60 days from the date of receipt of the application money and is to file e-form after allotment of debt instruments. The issuer Company can't utilise the money till return of allotment is filled with ROC. Further, if the company wants listing of debt security issued on private placement basis, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 are to be followed. SEBI made it mandatory to follow electronic book mechanism of all issues of size above ₹ 200 crore. Issues below ₹ 200 crore have option to follow electronic book mechanism or existing mechanism. Issuer of debt on private placement has to file a self-disclosure document with the respective exchange if it is seeking the listing of the instrument. Besides above, issuer has to obtain credit rating for the instrument from at least one credit rating agency registered with SEBI and also appoint a debenture trustee if they are issuing secured debt security. Recently, Finance Minister vide its announcement dated 17 May 2020 under the Aatma Nirbhar Bharat Abhiyaan for Ease of Doing Business for Corporates, has stated that Private Companies which list NCDs on stock exchanges shall not be regarded as Listed companies. This implies several regulations as applicable to Listed Companies shall not apply, thereby reducing the compliance burden.

Conclusion

There has been a prominent rise in the market capitalisation of the securities in the Debt segment and there has also been a marked increase in the number of securities available other than the traditional instruments. Raising debt through private placement continues to be a preferred choice of many owing to the cost effectiveness and shorter timelines and a well-structured Debt instrument shall complete the entire process of raising the debt seamlessly for the corporate entities.

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