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MCA Clarification on Applicability of Provisions of Companies Act, 2013 on Rupee Bonds

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MCA Clarification on Applicability of Provisions of Companies Act, 2013 on Rupee Bonds

Reserve Bank of India (“**RBI**”) vide its notification dated September 29, 2015 – “*External Commercial Borrowings (ECB) Policy – Issuance of Rupee denominated bonds overseas*”, (“**the Notification**”) eased the options of raising debt from the external sectors, by permitting Indian corporates to issue rupee denominated bonds (“**Rupee Bonds**”) to non-resident investors. This relaxation granted by RBI helped Indian corporates mitigate the risk of currency fluctuations. As per the Notification, the Rupee Bonds are to be issued under the extant external commercial borrowing (“**ECB**”) policy. RBI through its circular “*Issuance of Rupee denominated bonds overseas*” dated April 13, 2016, made an effort to promote the Rupee Bonds by reducing the minimum maturity period for Rupee Bonds issued overseas from five years to three years.

However, confusion prevailed amongst the Indian corporates, concerning compliance with the provisions in respect of private placement prescribed under the Companies Act, 2013 (“**Companies Act**”) and Companies (Share Capital and Debenture) Rules, 2014 (“**Debenture Rules**”) at the time of issue of such Rupee Bonds.

Clarification by Ministry of Corporate Affairs (“MCA”)

MCA had earlier clarified that the provisions in respect of private placement under the Companies Act were not applicable to foreign currency convertible bonds or foreign currency bonds issued under the relevant RBI regulations, a circular on similar lines was awaited for regulating specifically the issue of Rupee Bonds by Indian corporates.

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MCA has on August 3, 2016 issued a circular (“**the Circular**”), providing clarifications concerning the non-applicability of the relevant provisions of the Companies Act on issue of Rupee Bonds to overseas investors by Indian companies. As per the Circular, MCA has clarified that unless otherwise provided in any circular/directions/regulations issued by RBI, the provisions of Chapter III of the Companies Act (related to *Prospectus and Allotment of Securities*) and Rule 18 of Debenture Rules would not apply to issue of Rupee Bonds, made exclusively to person resident outside India in accordance with the applicable sectoral regulatory provisions. MCA is in the process of appropriately amending the Debenture Rules, in this regard.

Circular by Securities Exchange Board of India (“SEBI”) on Rupee Bonds

SEBI has also issued a circular on August 4, 2016 (“**SEBI Circular**”), regarding foreign investment in Rupee Bonds issued overseas by Indian corporates, for clarifying that investment in Rupee Bonds, shall not be treated as a Foreign Portfolio Investment and the SEBI (Foreign Portfolio Investor) Regulations, 2014 shall not be applicable to such investments. SEBI Circular has further clarified that the corporate debt limit of INR 2443.23 billion shall be redefined as combined corporate debt limit for foreign investment in Rupee Bonds issued both onshore and overseas and the foreign investment shall be reckoned against this combined corporate debt limit.

Further, SEBI has asked the depositories (NSDL and CDSL) in its SEBI Circular to put in place the necessary systems for receiving data on foreign investments in overseas Rupee Bonds from RBI on a periodic basis.

Conclusion

RBI Notification has been well received by Indian corporates, who have shown interest and enthusiasm in issuing Rupee Bonds. It is estimated that Indian Corporates have already raised INR 50 billion by issuing Rupee Bonds. MCA and SEBI by issuing their respective clarifications have simplified the compliances required for issuance of Rupee Bonds thereby easing the process for issue of Rupee Bonds.

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