



EXPOSURE OF PROPOSED AMENDMENTS TO THE RULES ON CORPORATE BONDS

Details of the proposed amendments are as follows:

LEGEND: Additions are underlined and Justifications are *italicized*.

Full text of Existing Rule

567. Registration Requirement

These rules shall apply to all bond issuance by any public company, foreign public companies and supranational bodies.

Documents/Information Required:

In relation to any issue, offer or invitation made pursuant to these rules, the following documents shall be filed along with the registration statement:

- (a) Duly completed form SEC 6;
- (b) Appropriate filing and registration fees;
- (c) Two (2) copies of the board resolution authorizing the issue of the bond;

Provided that a resolution of the general meeting shall be required where;

(i) The amount to be borrowed is beyond the specified limit on the borrowing powers of directors in the Memorandum and Articles of Association of the Issuer.

(ii) The bond to be issued is convertible.

(d) Two (2) copies of the Memorandum and Articles of Association of the Issuer certified by the Corporate Affairs Commission;

(e) A copy of certificate of incorporation of the issuer certified by the company secretary;

(f) A signed copy of the Issuers latest audited accounts for the preceding three (3) years, with the latest account not more than nine (9) months old at the time of filing with the Commission;



- (g) Reporting accountant report;
- (h) Consent letters of the parties to the offer;
- (i) Two (2) copies of the draft vending agreement between the issuer and the issuing house;
- (j) Draft underwriting agreement (where applicable);
- (k) Rating report by a registered rating agency;
- (l) A letter of “**No Objection**” from the relevant regulatory body (where applicable);
- (m) Two (2) copies of draft trust deed;
- (n) A draft prospectus, right circular, placement memorandum or any form of information memorandum shall contain the following information: -
 - i. Background information on the issuer and/or originator in the case of asset-backed securities (ABS) issue including mortgage backed securities (MBS);
 - ii. Profile of directors of the issuer;
 - iii. A description of the transaction and structure of the issue;
 - iv. Details of the utilization of proceeds. If proceeds are to be utilized for project, details of the project;
 - v. Details of estimated expenses for the issue;
 - vi. Conflict of interest situations, risk factors and mitigating factors;
 - vii. For issuances made for the purpose of refinancing an existing debt, information on the existing debt should be provided;
 - viii. Coupon rate, the date of maturity or if the issue matures severally, a brief information on the serial maturities;
 - ix. Names, telephone numbers and facsimile number and the e-mail addresses of principal officers of the issuer and principal advisers of the issue;
 - x. Terms and conditions of the issue;
 - xi. Any other material information in relation to the issue.
- (o) Declaration by the issuer on compliance with all requirements of the Act;



(p) Such other material information as may be required by the Commission.

568. Condition for Approval

The issuance of bonds by public companies and supranational bodies shall be subject to the following conditions:

a. Eligibility of Debt Offering

- i. Any public company, foreign public company or supranational body is eligible to issue corporate bonds;
- ii. All necessary approvals (where applicable) in relation to the issue, from other regulatory authorities shall be obtained and filed with the Commission together with the registration statement. Any conditions imposed by such regulatory authorities, shall be complied with throughout the tenor of the bond;
- iii. All issues of corporate bonds shall be rated by a rating agency (optional for private placements);
- iv. For a bond that will be issued through public offering, the credit rating shall not be below an investment grade;
- v. No Issuer shall offer bond if it is in default of payment of interest or repayment of principal in respect of previous debts issuance for a period of more than six (6) months.

(b) Mode of issue

Corporate bonds may be issued by way of an offer for subscription, rights issue or private placement.

(c) Resolution

There shall be a resolution by the board authorizing the issue of the bond.

Provided that a resolution of the general meeting resolution shall be required where:

- (i) The amount to be borrowed is beyond the specified limit on the borrowing powers of directors in the Memorandum and Articles of Association of the issuer;
- (ii) The bond to be issued is convertible.

(d) Disclosure and creation of charge



Where the debenture is secured, the issuer shall ensure the assets on which the debenture is secured are adequate and this should be specifically stated together with the ranking of the charge(s) in the offer documents.

In case of second or residual charge or subordinated obligation, the offer documents shall clearly state the risks associated with such subsequent charges by giving details.

Proposed Amendment to Rule 568:

The issuance of bonds by public companies and supranational bodies shall be subject to the following conditions:

1. Eligibility of Debt Offering

- a) Any public company, foreign public company or supranational body is eligible to issue corporate bonds;
- b) All necessary approvals (where applicable) in relation to the issue, from other regulatory authorities shall be obtained and filed with the Commission together with the registration statement. Any conditions imposed by such regulatory authorities, shall be complied with throughout the tenor of the bond;
- c) All issuers of corporate bonds and the bonds to be issued shall be rated by a rating agency (optional for private placements). Provided that for an SPV, the Sponsor rating shall be forwarded.
- d) For a bond that will be issued through public offering, the credit rating shall not be below an investment grade;
- e) No Issuer shall offer bonds if it is in default of payment of interest or repayment of principal in respect of previous debts issuance for a period of more than 6 months.

2. Mode of issue

Corporate bonds may be issued by way of an offer for subscription, rights issue or private placement.



3. Resolution

There shall be a resolution by the board authorizing the issue of the bond provided where the issuance is by a special purpose vehicle, the sponsor's resolution shall be filed.

Provided that a resolution of the general meeting shall be required where: -

- a. The amount to be borrowed is beyond the specified limit on the borrowing powers of directors in the memorandum and articles of association of the Issuer;
- b. The bond to be issued is convertible.

4. Disclosure and creation of charge

Where the debenture is secured, the Issuer shall ensure the assets on which the debenture is secured are adequate and this should be specifically stated together with the ranking of the charge(s) in the offer documents.

In case of a second or residual charge or subordinated obligation, the offer documents shall clearly state the risks associated with such subsequent charges by giving details.

5. Registration Requirements

- a. An issuer shall register securities to be issued under this Rule with the Commission by filing an application on the appropriate SEC Form as provided in the Schedules to these Rules and Regulations accompanied by the following documents (where applicable): -
 - i. a copy of the resolution(s) by the general meeting authorizing the offer. The resolution shall be certified by the company secretary;
 - ii. a copy of the board resolution authorizing the issue of the bond provided where the issuance is by a special purpose vehicle, the sponsor's resolution shall be filed;
 - iii. a copy of the memorandum and articles of association (including amendments thereto) of the Issuer certified by the Corporate Affairs Commission (CAC);
 - iv. a copy of certificate of incorporation of the Issuer certified by the CAC. Where a copy has already been filed with the Commission a photocopy of the



- certificate of incorporation certified by the company secretary may be forwarded;
- v. A signed copy of the Issuers latest audited accounts for the preceding 3 years, with the latest account not more than 9 months old at the time of filling with the Commission. Provided that the Account shall remain valid throughout the offer period.
 - vi. In the case of a new company, an audited statement of affairs disclosing the following information:
 - a. financial statements;
 - b. date of incorporation;
 - c. Issued share capital;
 - d. paid-up capital which shall not be less than 25% of the issued share capital of the company;
 - e. profile of promoters/directors;
 - f. profile of management staff;
 - g. a summary of the objectives and business of the company.
 - vii. A copy each of the draft prospectus and abridged prospectus containing the following: -
 - a. Background information on the Issuer and/or originator in the case of asset-backed securities (ABS) issue including mortgage-backed securities (MBS);
 - b. Profile of directors of the Issuer;
 - c. A description of the transaction and structure of the issue;
 - d. Details of the utilization of proceeds. If proceeds are to be utilized for the project, details of the project;
 - e. Details of estimated expenses for the issue;
 - f. Conflict of interest situations, risk factors;
 - g. For issuances made for the purpose of refinancing an existing debt, information on the existing debt should be provided;
 - h. Coupon rate, the date of maturity or if the issue matures severally, brief information on the serial maturities;
 - i. Names and telephone numbers along with the e-mail addresses of principal officers of the Issuer and principal advisers to the issue;
 - j. Terms and conditions of the issue;
 - k. Any other material information in relation to the issue.
 - viii. a copy of the draft trust deed
 - ix. reporting accountant report;
 - x. a copy of the draft underwriting agreement and sub-underwriting agreement;



- xi. a copy of draft vending agreement, between Issuer and the issuing house. Where there are joint issuing houses, the terms of their relationship should be incorporated in the vending agreement;
 - xii. a letter of "No Objection" from the relevant regulatory body;
 - xiii. letters of consent given by the parties to the issue, sworn to before a Notary Public or Commissioner for Oaths. Consent letters shall not be notarized by a person who is also a named signatory on the consent letter or who is a member or employee of the firm whose consent is required. Where the consent is contained in a power of attorney, it shall be executed and stamped by the stamp duties office;
 - xiv. evidence of technical agreement (if any) reached between the Issuer and technical draft partner(s), advisers/consultants;
 - xv. a copy of CAC Form containing the particulars of directors, certified by the CAC;
 - xvi. a copy of the mandate letter by the Issuer to the Issuing House;
 - xvii. evidence of payment of registration and filing fees;
 - xviii. rating report by a registered or recognized rating agency, the rating of the Issue and the Issuer or Sponsor in the case of an SPV, shall be of Investment grade and shall be annually reviewed throughout the life of the bond;
 - xix. list of claims & litigations of the Issuer and the solicitor's opinion;
 - xx. a sworn declaration that the Issuer has fully disclosed all material facts in the offer document. The declaration shall be signed by the Chief Executive Officer (CEO), the company secretary and the Chief Financial Officer (CFO) of the Issuer;
 - xxi. any other document required by the Commission under these Rules and Regulations.
- b. Where the Issuer had already filed such documents with the Commission (*e.g.* Memorandum and Articles of Association or certificate of incorporation or certificate of increase in share capital, *etc.*), such issuer need not file the documents in subsequent transactions. Provided the Issuer enters into an undertaking that since the previous filing, there has been no change in the document already filed with the Commission.
- c. Where it is intended to list on the Securities Exchange or with any association or body of securities dealers recognized by the Commission, the Issuer shall in addition file with the Commission such copies of the application to the Securities Exchange, association or body of security dealers and a certificate that an application to the effect has been made.
- d. The copy of the approved prospectus shall be signed by the directors of the Issuer and other parties to a public offer and together with other offer documents, shall be forwarded to the Commission for registration. Where a party will not be available to sign the prospectus, he shall execute a power of attorney



in favor of any other available party to sign on his behalf. This shall be filed with the offer documents.

- e. Upon signing the offer documents or holding a Completion Board Meeting the following documents must be filed within 3 Business Days with the Commission (where applicable): -
 - a. A signed/executed copy of the shelf prospectus;
 - b. A signed/ executed copy of the prospectus/ pricing supplement;
 - c. A copy of vending agreement (signed/ sealed and stamped);
 - d. A copy each of programme and supplemental trust deeds (signed, sealed and stamped);
 - e. A copy of underwriting agreement (signed, sealed and stamped));
 - f. A copy of sub-underwriting agreement (signed, sealed and stamped);
 - g. A copy of specimen e-allotment notice;
 - h. A signed copy of newspaper advert material;
 - i. power of attorney in case of absentee parties;

 - j. any other material information.

- k. Where the securities registered by the Commission under this part are not offered to the public within a period of 6 months after the registration, the Issuer shall revert to the Commission for a revalidation of the registration before they are offered to the public.

6. **Sponsors without Financial Track Record.**

Where the Sponsor of an SPV has no financial track record, the following shall apply:

- I. The offer shall be supported by full credit enhancement in the form of guaranty by a registered/recognized Guarantor. For the purpose of this rule, the guarantor shall be a financial institution or any other entity as may be approved by the Commission.

- II. The Guarantor rating shall be investment grade and shall be filed along with the issue rating;



III. A Guarantee Agreement must be forwarded which shall include amongst others:

- a. Details of the nature and extent of the payment obligations of the Special Purpose Vehicle (SPV) to be guaranteed by the Guarantor for the benefit of the beneficiaries.
- b. The irrevocability and unconditionality of the Guarantee Agreement, including a waiver of all defences to a claim.
- c. The mechanics and timelines for the payment of claims under the guarantee

Justification:

- *To provide for credit enhancement where the Issuer or its sponsor does not have adequate financial track record*