INDIAN SECURITISATION FOUNDATION

23rd July, 2018

To
Securities and Exchange Board of India
Plot No. C4-A, "G" Block, Bandra Kurla Complex,
Bandra (East)
Mumbai - 400 051
India

Kind Attn: Ms Vandana Agarwal

**Sub: Recommendations for amending SEBI (Securitised Debt Instruments) Regulations, 2008**

Respected Ma'am,

## About the Indian Securitisation Foundation (ISF)

**ISF** is a not-for-profit entity representing the securitisation industry in India. The membership of the Foundation includes banks, NBFCs, microfinance institutions, other issuers and investors and securitisation professionals for promoting interest of securitisation and fixed income securities in India.

## Context

The Securities and Exchange Board of India (Securitised Debt Instruments) Regulations, 2008 were issued on 26th May, 2008. However, despite being in existence for than a decade, this has hardly been put to use. This is mainly due to the complexities inherent in and lack of motivation offered by the Regulations. Currently, the tax transparency under section 115TCA happens to be the only the motivation for issuing listed SDIs, the same has been discussed below.

## Tax transparency on the SDIs

Section 115TCA of the Income Tax Act, 1961 provides of tax transparency in case of securitisation transactions. The provisions of this section is applicable only on such

transactions which involve issuance of securities by securitisation trusts. The term "securitisation trust" is a defined term and includes the following:

> *(d) "securitisation trust" means a trust, being a—*
>
> > *(i) "special purpose distinct entity" as defined in clause (u) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and regulated under the said regulations; or*
> >
> > *(ii) "Special Purpose Vehicle" as defined in, and regulated by, the guidelines on securitisation of standard assets issued by the Reserve Bank of India; or*
> >
> > *(iii) trust set-up by a securitisation company or a reconstruction company formed, for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), or in pursuance of any guidelines or directions issued for the said purposes by the Reserve Bank of India,*
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> *which fulfils such conditions, as may be prescribed.*

Securitisation transactions in India are carried on mostly by banks and financial institutions, and in process they also have to comply with the provisions of the RBI guidelines. Therefore, transactions which are not carried out in accordance RBI guidelines are insignificant in number and the number of transactions which have to be compulsorily listed also remains insignificant.

## Recommendations

a. Definition of debt:

The definition of "debt" or "receivables" under the Regulations is as follows:

*(g) "debt" or "receivables" means any right that generates or results into a cash flow and includes -*

*(i) mortgage debt ;*

*(ii) such receivables arising out of securities as may be specified by the Board;*

*(iii) any financial asset within the meaning of clause (l) of sub - section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

The definition of debt under the Regulations is very restrictive, the same may be amended to the increase the coverage. While the Regulations use the word receivables as well, however, the definition of the same refers to only such receivables arising out of securities. Therefore, there is an impression that only such receivables arising from securities can be securitised, thereby, leaving out a large number of the items which can be securitised, like lease receivables etc., from its gamut.

The meaning of the term "debt" or "receivables", therefore, must be reconsidered.

b. Definition of the SDI:

The definition of "securitised debt instrument" under the Regulations is as follows:

*(s) "securitised debt instrument" means any certificate or instrument, by whatever name called, of the nature referred to in sub-clause (ie) of clause (h) of section 2 of the Act issued by a special purpose distinct entity;*

Sub-clause (ie) of Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 defines securitised debt instrument in the following manner:

*(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and*

*acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be*

While the definition provided in sub-clause (ie) is an inclusive definition, however, it does not expressly include debt securities issued by SPEs. Debt securities, if issued by SPEs, shall not attract the provisions of section 115TCA, therefore, will be more beneficial for the investors and issuer as well. Therefore, a clarificatory change to include debt securities within the scope of this clause will be welcoming.

c. Meaning of special purpose distinct entity:

As per the Regulations, a special purpose distinct entity has to be in the nature of trust, however, world-over the special purpose distinct entities can also be in the nature of the companies. Therefore, the meaning of the term may be expanded to include all types of entities.

d. On-balance sheet securitisation structures:

Currently the Regulations give an impression that only such structures which involve assignment of receivables to a trust can be securitised. However, bankruptcy remoteness can be achieved through other means as well, like in case of Covered Bonds. These are not covered under the Regulations.

e. Simplification of rules:

The common understanding in the securitisation industry is that the SEBI Directions pose additional compliance burden on the originators, the SPV and the trustees, therefore, the same is not referred to. Some of them have been enlisted below:

i. Chapter IV of the Regulations require detailed re-examination so as to ensure that there are no impractical obligations on the trustees.
ii. Provisions relating to the accounts, audit and maintenance of records also seem impractical depending on the manner of operations of the SPEs.

iii. Compliance requirements under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015: Chapter VIII of the SEBI (LODR) Regulations provide for various compliance requirements with respect to securitised debt instruments. SPEs in India do not have compliance officers, therefore, these requirements become impractical. These may be removed.

iv. Costs involved in listing of SDIs: The common understanding is that listing of SDIs would increase overall cost of a transactions, this acts a major de-motivator for the various stakeholders in the industry. Therefore, the provisions relating to registration fees, application fees etc., may be reconsidered.

Therefore, there is a need for the reconsidering the entire Regulations at length so as to attract the various stakeholders of the industry to get their transactions listed. We will be happy to carry out a detailed study of the Regulations and suggest areas which require simplification.

Should you need any further clarification, we would be glad to provide the same.

Thanking you,

Yours truly,

For ***Indian Securitisation Foundation***

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Abhirup Ghosh
Authorised Signatory