



SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA

(Established under Act No. 36 of 1987)

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By Post

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TO: ALL LISTED COMPANIES AND CREDIT RATING AGENCIES REGISTERED WITH THE SEC.

APPROVAL CRITERIA RELATING TO ISSUANCE OF UNLISTED DEBT SECURITIES BY LISTED ENTITIES.

The Securities and Exchange Commission at its 241st Commission Meeting has decided the following to be the approval criteria with regard to issuance of **unlisted debt securities** by **listed public companies** under section 29 A of the Securities and Exchange Commission of Sri Lanka Act No 36 of 1987 as amended (SEC Act). The said criteria shall be effective from 1st of January 2009.

CRITERIA

▪ **Credit Rating of the debt security**

Debt securities shall have a rating from a rating agency registered with the SEC.

The issuer of the debt security shall publish the rating in the prospectus. Any updates to the rating assigned shall be published in at least one issue of a daily national newspaper with wide circulation. The above said publication of the rating shall be prepared by the relevant credit rating agency and shall include:

- a synopsis of the information set out in the Rating Rationale which is material to the evaluation of the creditworthiness of the debt security; and
- the rating scale.

'Private Placements' which fall within the criteria set out below shall be exempt from the rating requirement.

(1) Minimum Subscription (Minimum Parcel Size) per investor shall be Rupees One Million (Rs. 1,000,000/-)

(2) It should be placed with Qualified Investors (i.e: Institutional Investors as defined below)

OR

(3) If it is placed with Non Qualified Investors the maximum Number of non qualified investors shall be restricted to five investors.

Limitation on Resale of Securities issued via Private Placements

Debt securities privately placed with non qualified investors can be resold by such non qualified investors and the value could be split provided;

- the minimum parcel size per investor is Rupees One Million (Rs. 1,000,000/-); and
- the **total** number of non qualified investors who have invested in the privately placed debt instrument at any given point in time including the non qualified investors who have invested in the debt security at the point of original issuance and upon resale of debt securities by such investors shall not exceed a maximum of five (5) non qualified investors.

The above limitation on resale would not apply to debt securities privately placed with Qualified Investors provided the transferee is a Qualified Investor.

Any transfer of debt securities issued should be executed through the issuer. The issuer shall be able to demonstrate due compliance with the requirements relating to 'private placement' and any limitation on 'resale of securities issued via private placement' mentioned above when called upon to do so by the SEC.

The above restrictions attached to a private placement shall be clearly stated in the "information memorandum" and/or in the debenture certificate in order to ensure investors are aware of the restrictions.

▪ **Certified Copy of the Relevant Board Resolution**

A certified copy of the Board resolution which states all the salient features of the debt security shall be submitted to the SEC. (The salient features would include the period of the debt security, interest rates, whether the debt securities are redeemable or irredeemable, convertible or not, secured or unsecured, whether they are subordinate or not, voting rights, all covenants, cross default clauses and any other features that could have an impact on the holders of listed securities of the issuer)

▪ **Discretion of the SEC**

In the event the SEC forms the view that the issue may result in a significant variation or dilution of the rights of holders of the listed equity of the issuer it may call on the issuer to obtain the approval of seventy five per centum of those holders of listed equity of the issuer entitled to vote and voting.

"Qualified Investor" means:-

- a licensed commercial bank within the meaning of the Banking Act, No 30 of 1988;
- a licensed specialized bank within the meaning of the Banking Act, No. 30 of 1988 as amended by Act, No. 33 of 1995;
- Development Banks;
- Specialized Savings Bank;
- Housing Banks;
- Co-operative Bank Unions, excluding Co- operative Societies;
- a finance company registered under the Finance Companies Act, No 78 of 1988;
- a person registered to carry on finance leasing business under the Finance Leasing Act No 56 of 2000;
- licensed securities dealer or broker, acquiring for its own account or acting as agent for or for the purpose of selling to another qualified Investor;
- a regulated finance company;
- a registered insurer;
- the trustee or manager of a mutual fund, pension fund, Employee Provident Fund or any other similar pooled fund;
- a company with net asset of Rs. 500,000,000 or more as disclosed in the last audited accounts of the company;
- an Individual whose initial investment is Rs. 50,000,000 or more;

Documents required to be submitted to the SEC together with an application for the issuance of unlisted debt securities by listed public companies under section 29 A of the SEC Act.

1. True copy of the Rating rationale issued by the relevant rating agency.
2. Certified copy of the Article of Association.
3. Certified or true copies of Last published Financial Accounts together with any interim accounts.
4. Board resolution authorizing the issuance of unlisted debt securities together with the salient features of the issue certified by the Company Secretary to be a 'true copy'.
5. Certified copy of the prospectus or information memorandum as applicable.

Marina Fernando

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Deputy Director General