FIDC

Finance Industry Development Council

(A Representative Body of Asset and Loan Financing NBFCs)

101/103, Sunflower, 1st Floor, Rajawadi Road No.2, Ghatkopar (East), Mumbai – 400 077 (India)
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16th September, 2019

Shri Lekhan Thakkar
Director (PM)
Department of Economic Affairs
Ministry of Finance
New Delhi 110 001

Respected Sir,

SUB: **<u>Companies (Share Capital and Debentures) Amendment Rules, 2019 – Item 5 - Request For Clarification</u>**

Finance Industry Development Council (FIDC) is a Self-Regulatory Organization (SRO) cum Representative Body of the NBFCs registered with the Reserve Bank of India. FIDC was formed 15 years ago and is the recognized face of the NBFC sector. We have been engaged in regular interaction both with Reserve Bank of India and Govt. of India, which include pre-budget meetings and also important policy related meetings with RBI. Almost all the leading NBFCs and a large number of small and medium sized NBFCs are our members.

NBFCs and HFCs are the largest issuers of debentures (both through public issues and the private placement route). This instrument forms a very significant part of resources raised by NBFCs. The extant rules on maintenance of Debenture Redemption Reserve ("DRR") required NBFCs to maintain DRR on publicly issued debentures and the sector had requested for removal of this requirement since it resulted in a significant increase in the cost of such debentures. Privately placed debentures issued by NBFCs/HFCs did not attract (nor in the past ever attracted) this DRR requirement. During the course of the Hon. Finance Minister's speech on the Union Budget had kindly accepted this request and had announced that DRR for debentures issued by NBFCs would be done away with for public issues.
The Companies (Share Capital and Debentures) Amendment Rules, 2019 issued pursuant to this announcement have dispensed with the requirement of maintaining a DRR for public issue of debentures as well as reiterated the exemption from DRR for privately placed debentures issued by NBFCs/HFCs, irrespective of whether the NBFC/HFC be a listed entity or unlisted entity.

This is a welcome change and FIDC would like to place on record its thanks to the Government of India for having removed the requirement of DRR for NBFCs/HFCs.

<u>Confusion in Item no.5 of the Amended Rules - Relating to Clause (b) (v) of sub rule (7) of Rule 18.</u>

There is, however, a confusion that has arisen due to the drafting of sub clause (v) of the amended sub rule (7) (b) of Rule 18. The said sub-clause (v) states as follows:

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***"(v) In case a company is covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by a company covered in item (A) or item (B) of sub clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), invest or deposit**, as the case may be, **a sum which shall not be less than fifteen per cent., of the amount of its debentures maturing during the year,** ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi): Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year."* (emphasis supplied)

This wording has given rise to an interpretation that for NBFCs/HFCs, while there is no DRR requirement, they should maintain a minimum 15% deposit in respect of the debentures maturing during a financial year, irrespective of whether the debentures be privately placed or publicly issued. The earlier sub clause 7 of the rules (prior to the amendment dated 16th August 2019) read as follows:

*"(c) **every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit**, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-…",* which clearly stated that the 15% **deposit requirement applied only to those companies where DRR was required.**

Request For Clarification

We hereby request the Ministry to kindly issue a clarification to the effect that the aforesaid requirement of maintaining 15% deposit would apply only to those companies that are required to maintain DRR. In other words, this requirement of 15% deposit will not apply to NBFCs.

We look forward to receiving a positive reply from your end. We shall be glad to provide any other information required in this regards. Assuring you of our full cooperation always and thanking in you in anticipation

Yours Faithfully

For Finance Industry Development Council

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Chairman
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