

# Securities Contracts (Regulation) Amendment Act, 2007

February 15, 2013

## **SECURITIES CONTRACTS (REGULATION) AMENDMENT ACT, 2007<sup>1</sup>**

### **[ACT NO. 27 OF 2007]**

[May 28, 2007]

An Act further to amend the Securities Contracts (Regulation) Act, 1956 Be it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:-

Prefatory Note-Statement of Objects and Reasons.-Securitisation is a form of financing involving pooling of financial assets and the issuance of securities that are re-paid from the cash flows generated by the assets. This is generally accomplished by actual sale of the assets to a bankruptcy remote vehicle, that is, a special purpose vehicle, which finances the purchase through the issuance of bonds. These bonds are backed by future cash flows of the asset pool. The most common assets for securitisation are mortgages, credit cards, auto and consumer loans, student loans, corporate debt, export receivables, off-shore remittances, etc.

2. Besides other advantages, securitisation (a) allows banks and financial institutions to keep these loans off their balance sheets, thus reducing the need for additional capital; (b) provides banks and financial institutions with alternative forms of funding risk transfer, a new investor base, potential capital relief and capital market development; (c) can reduce lending concentration, improve liquidity and improve access to alternate sources of funding for banks and financial institutions; (d) facilitates attainment of funding at lower cost as a result of isolating the assets from potential bankruptcy risk of the originator; (e) facilitates better matching of assets and liabilities and the development of the long-term debt market; (f) provides diversified pools of uniform assets; and (g) has the advantage of converting non-liquid loans or assets which cannot be easily sold to third party investors into liquid assets or marketable securities. Lower funding costs are also a result of movement of investments from less efficient debt markets to more efficient capital markets through the process of securitisation.

3. In India, the securitisation market remains underdeveloped. Although two major legislative initiatives, namely, (a) the amendment to the National Housing Bank Act, 1987 (NHB Act) in the year 2000; and (b) enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), have been taken, the market has not picked up because of the absence of the facility of trading on stock exchanges. The potential buyers get discouraged by the possibility of having to hold the certificate or instrument in respect of securitisation transactions till maturity. This, in turn, restricts the growth of business of housing finance companies and banks.

4. Securitisation transactions under the NHB Act are not covered under the definition of "securities" in the Securities Contracts (Regulation) Act, 1956. As such, trading in certificates or instruments relating to such transactions cannot take place on stock exchanges and buyers of



such securitised financial certificates or instruments are left with few exit options. Under the SARFAESI Act, while "security receipts" have been covered under the definition of "securities", the provisions of the said Act restrict sale and purchase only amongst qualified institutional buyers. Besides, the "security receipts" under the SARFAESI Act can be issued only by a securitisation company or a reconstruction company registered with the Reserve Bank of India. This obviously limits the interest in such receipts and the market has not taken off at all.

5. Keeping in view the potential of the market, international trends and consultations held with major institutional participants and market experts, it was decided to amend the Securities Contracts (Regulation) Act, 1956 and accordingly, the Securities Contracts (Regulation) Amendment Bill, 2005 was introduced in the Lok Sabha on the 16th December, 2005. The Bill was referred to the Standing Committee on Finance (hereinafter referred to as the "Committee") on 23rd December, 2005 for examination and report thereon. The Committee presented their report to the Lok Sabha on the 22nd May, 2006.

6. The Standing Committee in its report recognised the need for listing and trading of securitised certificates or instruments on the Stock Exchanges and expressed their agreement with the broad objectives of the proposals contained in the Securities Contracts (Regulation) Amendment Bill, 2005. However, it recommended a modified approach for regulation and development of market for such instruments. Government have examined the recommendations and decided to accept and act upon all of them. Since the approach recommended by the Standing Committee and agreed to by the Government are different from the provisions in the Securities Contracts (Regulation) Amendment Bill, 2005, it is proposed to withdraw the said Bill and to move a revised Bill, viz., the Securities Contracts (Regulation) Amendment Bill, 2006 to amend the Securities Contracts (Regulation) Act, 1956 so as to provide, inter alia, to-

(i) include securitisation certificates or instruments under the definition of "securities" and to insert for the said purpose, a new sub-clause (ie) in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956;

(ii) provide for disclosure based regulation for issue of the securitised certificates or instruments and procedure therefor and to insert for the said purpose, a new Section 17-A in the Securities Contracts (Regulation) Act, 1956 and make consequential amendments in Section 31 to provide regulation making powers to SEBI.

7. The Bill seeks to achieve the above objectives.

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**1. Received the assent of the President on May 28, 2007 and published in the Gazette of India, Extra. Part II, Section 1, dated 29th May, 2007, pp. 1-2, No. 32**

## 1. Short title.

This Act may be called the Securities Contracts (Regulation) Amendment Act, 2007.

## 2. Amendment of Section 2.

In Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereinafter referred to as the principal Act), in clause (h), after sub-clause (id), the following sub-clause shall be inserted, namely:-

"(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;”.

### 3. Insertion of new Section 17-A.

After Section 17 of the principal Act, the following section shall be inserted, namely:-

“17-A. Public issue and listing of securities referred to in sub-clause (ie) of clause (h) of Section 2.-

(1) Without prejudice to the provisions contained in this Act or any other law for the time being in force, no securities of the nature referred to in sub-clause (ie) of clause (h) of Section 2 shall be offered to the public or listed on any recognised stock exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.

(2) Every issuer referred to in sub-clause (ie) of clause (h) of Section 2 intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognised stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.

(3) Where the permission applied for under sub-section (2) for listing has not been granted or refused by the recognised stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent, per annum.

Explanation.-In reckoning the eighth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), shall be disregarded, and if the eighth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not a holiday.

(4) All the provisions of this Act relating to listing of securities of a public company on a recognised stock exchange shall, mutatis mutandis, apply to the listing of the securities of the nature referred to in sub-clause (ie) of clause (h) of Section 2 by the issuer, being a special purpose distinct entity.

### 4. Amendment of Section 23.

In Section 23 of the principal Act, in sub-section (1), in clause (c), for the word and figures “Section 17”, the words, figures and letter “Section 17 or Section 17-A” shall be substituted.

### 5. Amendment of Section 31.



In Section 31 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the manner, in which at least fifty-one per cent, of equity share capital of a recognised stock exchange is held within twelve months from the date of publication of the order under sub-section (7) of Section 4-B by the public other than the shareholders having trading rights under sub-section (8) of that section;

(b) the eligibility criteria and other requirements under Section 17-A.”

