

## JSA Prism Environment, Social & Governance (ESG)

August 2024

### **The Securities and Exchange Board of India issues consultation paper on expanding the scope of the sustainable finance framework in the Indian securities market, seeks comments**

The Securities and Exchange Board of India (“SEBI”), on August 16, 2024, released a consultation paper<sup>1</sup> on expanding the scope of sustainable finance framework in the Indian securities market and sought comments from the public.

SEBI’s consultation paper proposes to broaden the scope of debt instruments by introducing new options such as social bonds, sustainable bonds and sustainability-linked bonds alongside the established green debt securities. This is being done with the intention to attract enhanced investments in projects focused on addressing Environment, Social and Governance (“ESG”) issues.

#### **Background**

The 2030 agenda for sustainable development, adopted by all United Nations member states in 2015, emphasises the need for reducing poverty, improving health and education, addressing inequality and fostering economic growth while also tackling climate change and preserving natural resources to ensure global peace and prosperity, through its 17 (seventeen) Sustainable Development Goals (“SDGs”). Achieving these goals requires substantial funding to support integration of ESG parameters in business and economy.

Pursuant to the Finance Minister’s budget announcements for financial year 2023 – 24, which placed emphasis on simplifying and reducing the compliance burden for financial sector participants, a working group was formed which reviewed and proposed measures to enhance the ease of issuing non-convertible securities. Among its recommendations, the working group suggested redefining ‘green debt securities’ as ‘sustainability-linked securities,’ in order to broaden the scope to incorporate a wider range of sustainable finance instruments encompassing social and governance aspects in addition to environmental sustainability.

Industry associations like the Confederation of Indian Industry (“CII”) recommended adding social bonds, sustainable bonds and sustainability-linked bonds to the existing green debt securities. This will bolster sustainable finance and ensure alignment with global standards. Additionally, the 2024-25 budget highlighted the need for development of a taxonomy for climate finance to support climate adaptation and mitigation. These factors together prompted SEBI’s move to propose a framework for social bonds, sustainable bonds and sustainability linked bonds in the Indian securities market.

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<sup>1</sup> [https://www.sebi.gov.in/reports-and-statistics/reports/aug-2024/consultation-paper-on-expanding-the-scope-of-sustainable-finance-framework-in-the-indian-securities-market\\_85691.html](https://www.sebi.gov.in/reports-and-statistics/reports/aug-2024/consultation-paper-on-expanding-the-scope-of-sustainable-finance-framework-in-the-indian-securities-market_85691.html)

## Key highlights

SEBI, vide its notification dated February 2, 2023<sup>2</sup> updated the regulatory framework for green bonds to align it with the international standards and introduce new categories such as blue bonds, yellow bonds and transition bonds. Since, SEBI's current framework only partially addresses the broader range of thematic bonds, SEBI has proposed the expansion of the regulatory framework to encompass additional categories, collectively termed as ESG debt securities, to better support sustainable finance initiatives. Following are the key proposals:

### 1. Proposal 1:

- a) SEBI has proposed the expansion of the sustainable finance framework in India to include social bonds, sustainable bonds and sustainability-linked bonds alongside existing green debt securities. Collectively, these will be termed ESG debt securities. This framework will be structured to suit Indian requirements in consonance with the international frameworks. The SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**") will be amended to give effect to the same;
- b) SEBI will seek recommendations and feedback from the Industry Standards Forum ("**ISF**") to determine suitable international frameworks and necessary adjustments;
- c) The initial and ongoing disclosure requirements for ESG debt securities will be developed based on selected international frameworks, with appropriate adjustments to suit the Indian context; and

SEBI has sought consultation and comments from the public on whether introducing the ESG debt securities framework is appropriate and adequate and whether any specific international frameworks/ guidelines should be considered in this context.

### 2. Proposal 2:

- a) SEBI proposes to introduce 'Sustainable Securitised Debt Instruments' to expand sustainable finance products in the Indian securities market. These instruments will be based on underlying credit facilities that adhere to specified international or domestic sustainable finance frameworks as prescribed by SEBI from time to time; and
- b) To implement this, SEBI plans to amend the existing SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 to include a framework for these sustainable instruments. Initial and ongoing disclosure requirements will be established based on international standards, with SEBI consulting the ISF for recommendations

SEBI has sought consultation and comments from the public on whether introducing the sustainable securitised debt instruments framework is appropriate and adequate and whether any specific international frameworks/ guidelines should be considered in this context.

### 3. Proposal 3:

- a) To ensure transparency and credibility for ESG Debt Securities and sustainable securitised debt instruments, issuers and originators will be required to appoint an independent external reviewer or certifier and conduct an independent external in the manner which SEBI prescribes. This external review could be of varied types such as second party opinion, verification, certification, or scoring/rating;
- b) This review is intended to provide investors with reassurance regarding the use of proceeds from these securities as well as verified information on the key performance indicators associated with the securities. SEBI is considering if ESG rating providers could conduct these reviews provided there is no conflict of interest.

SEBI seeks consultation and comments from the public on whether the provision of independent external review is appropriate and adequate and whether ESG rating providers should be permitted to undertake the same.

4. The amendment to the NCS Regulations in February 2023<sup>2</sup> redefined 'green debt securities'. In the consultation paper SEBI has reproduced the amended definition of green debt securities which includes all the categories from the first definition and adds a few new ones as specified in the amendment dated February 2, 2023. For example, blue bonds for water and maritime sustainability, yellow bonds for solar energy and transition bonds for sustainable operations, among others. Apart from referencing India's Intended Nationally Determined Contributions under the Paris Agreement, indicating a focus on aligning with international climate commitments, the definition under the consultation paper allows for the inclusion of other categories as specified by the Board, making it more adaptable and inclusive of evolving sustainability criteria.
5. SEBI has invited public comments on the consultation paper which have to be submitted latest by September 06, 2024.

## Conclusion

According to the data compiled by Bloomberg, the ESG debt issuance in India this year has surpassed its 2021 record to reach a soaring USD 15.6 billion (US Dollars fifteen point six billion). Therefore, an incorporation of 'ESG' labelled financial instruments in the market will allow issuers to seek debt for a broader range of sustainable activities. This will assist India Inc in aligning the industry with the 2030 agenda vis-à-vis India's sustainable promise of 2070.

The anticipated regulatory changes outlined in SEBI's consultation paper are poised to address the funding gap that Indian companies face in meeting the SDGs. By facilitating better access to capital for sustainable projects, these reforms will significantly bolster India's position in the global ESG arena.

## Environment, ESG and Climate Change Practice

The Firm advises and represents clients in environmental disputes before the National Green Tribunal, High Court(s) and the Supreme Court of India. We also advise clients on environment, social and governance (ESG) issues and assist them in ensuring compliance with the relevant laws. The firm has been regularly advising clients in matters relating to climate change and energy transition.

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<sup>2</sup> [https://www.sebi.gov.in/hindi/legal/regulations/feb-2023/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-amendment-regulations-2023\\_67798.html](https://www.sebi.gov.in/hindi/legal/regulations/feb-2023/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-amendment-regulations-2023_67798.html)

		
<p>Ranked Among Top 5 Law Firms in India for ESG Practice</p>	<p><b>Outstanding</b> Energy and Infrastructure</p>	<p>Recognised in World's 100 best competition practices of 2024</p>
		
<p>19 Practices and 19 Ranked Lawyers</p>	<p>12 Practices and 42 Ranked Partners</p>	<p>Among Top 7 Best Overall Law Firms in India and 11 Ranked Practices</p>
	<p><b>IFLR1000 APAC Rankings 2023</b></p> <p>-----</p> <p>Banking &amp; Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p>	<p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>12 A List Lawyers in IBLJ Top 100 Lawyer List</p>
<p>18 Practices and 25 Ranked Lawyers</p>	<p>Restructuring &amp; Insolvency Team of the Year</p>	 <p>14 Practices and 38 Ranked Lawyers</p>
		
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