

Listing of Debentures

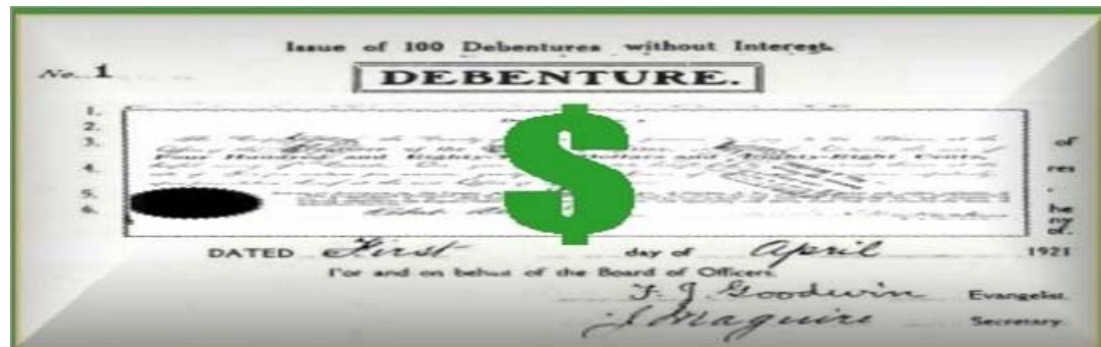
What is Debenture?

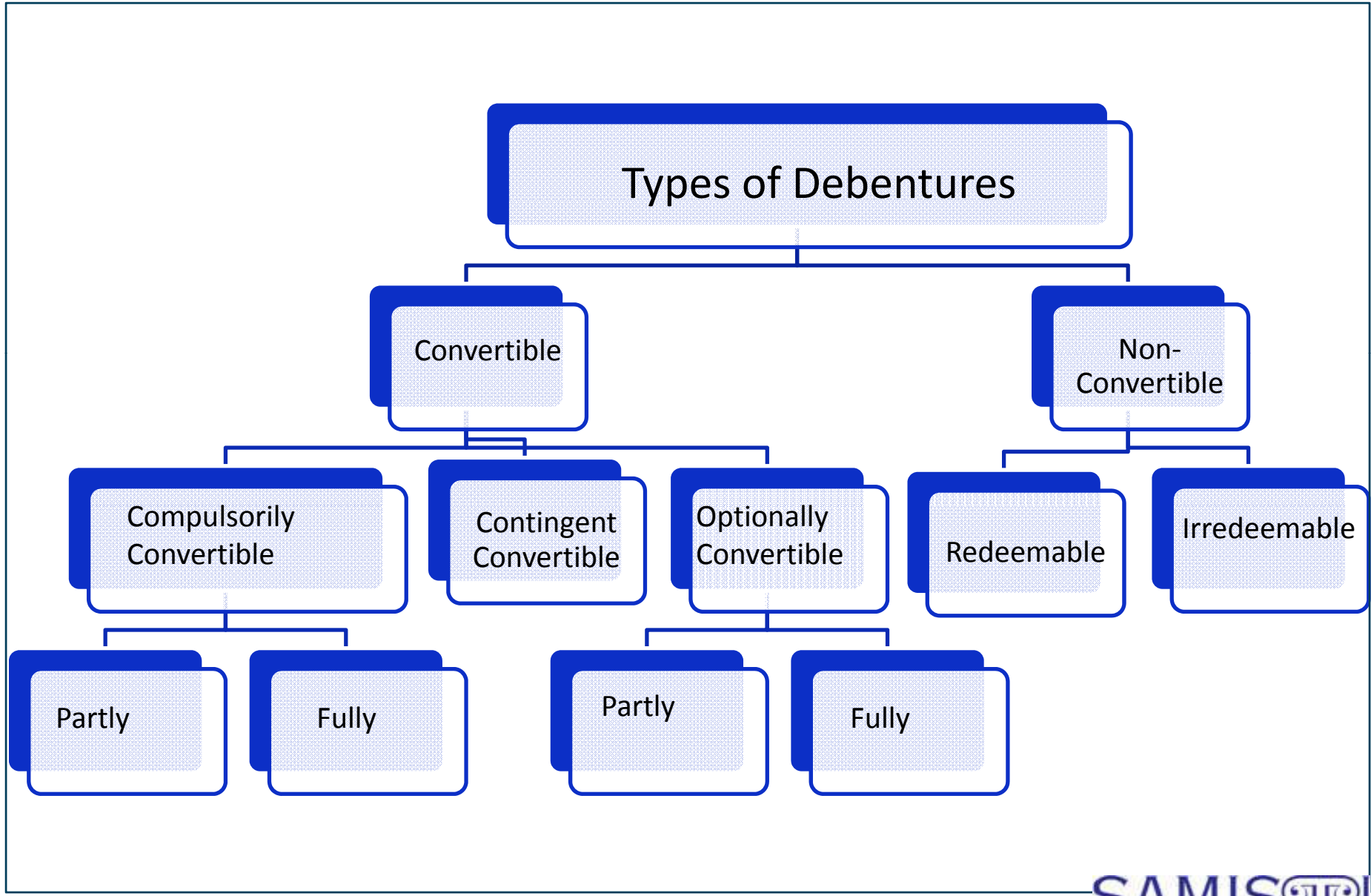
Definition:

- As per subsection 30 of section 2 of Companies Act, 2013, debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

Meaning:

- Instruments of Debt executed by the company.
- A Certificate of Loan.
- Company pays pre specified percentage of interest.





Laws Applicable to Issue of Debentures



Apart from the Companies Act, 2013, debenture issue is regulated by SEBI and RBI Regulations. Debentures issues by companies which wants to get the debentures listed are also required to comply with debt listing agreements.

Eligible Subscribers without triggering deposit provision of CA, 2013



Compulsorily Convertible Debentures:

No restriction on the type of subscriber. Debentures compulsorily shall be convertible into shares of the company within five years.

Non Convertible Debenture/ Optionally Convertible Debenture:

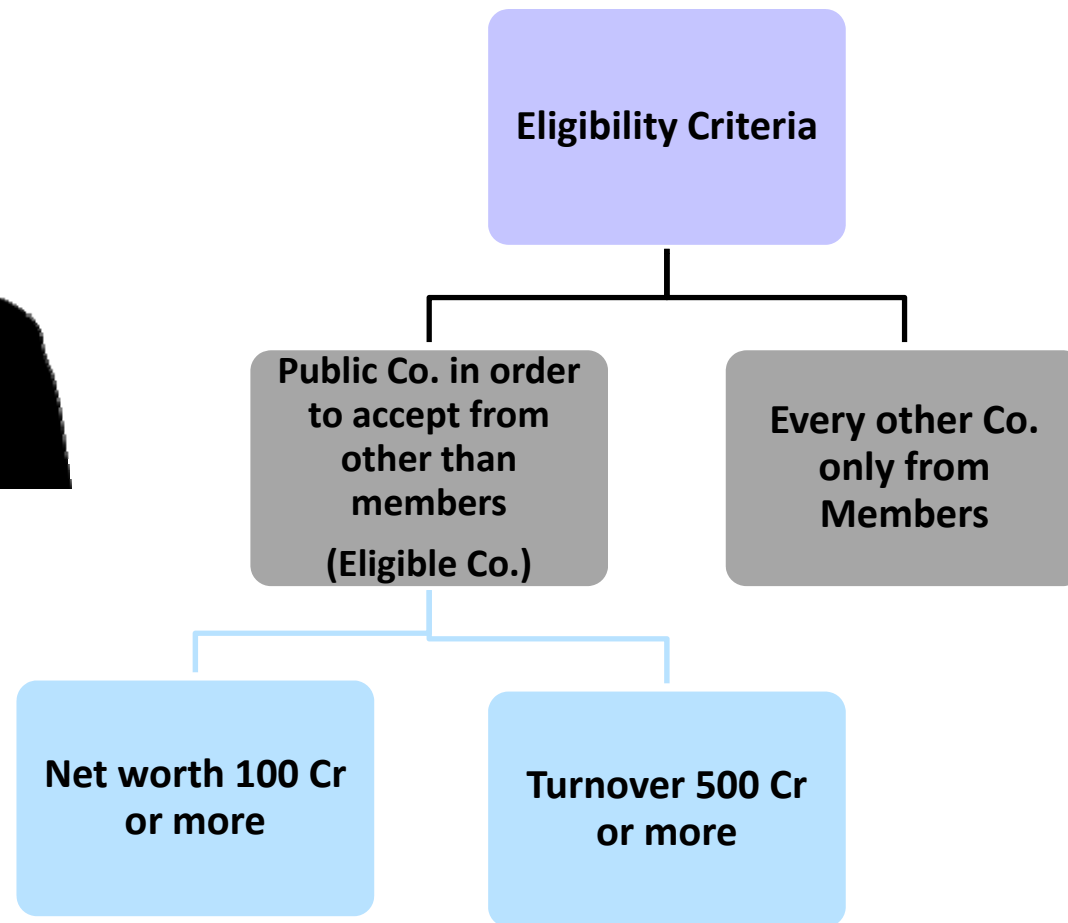
- Indian Company
- Person resident outside India
- Others

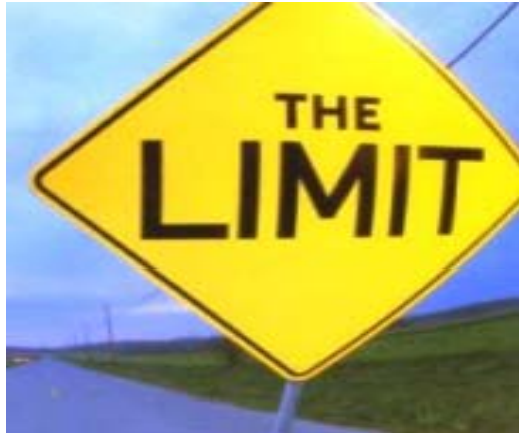
Deposit:



The company has to comply with the deposits provisions for issue of debentures to non-exempted category, as it attracts the definition of deposit.

From whom to accept





Threshold limits

Threshold limits for accepting or renewal of Deposits by various Co.

Eligible Co.

from members only, then till 10% of Paid up Capital + free reserves

from other than members, then till 25% of Paid up Capital + free reserves

Govt. Eligible Co.

till 35% of Paid up Capital + free reserves

Other than Eligible Co.

from members only, then till 25% of Paid up Capital + free reserves

Tenure of Deposit



Deposits shall be accepted

Minimum for 6 months

Maximum for 36 months

If accepted for less than 6 months

Such deposits shall not be more than 10% of paid up capital + free reserves

Minimum 3 months shall elapse before repayment of deposits

Issue of Debentures – Companies Act, 2013



- A company may issue debentures – convertible or non-convertible
- Issue of debentures into shares requires approval of shareholders by passing a special resolution
- Debenture Trustee to be appointed before issuing a prospectus or making an offer to company's members exceeding 500 persons
- Company issuing secured debentures to execute debenture trust deed not later than 60 days after the allotment of debentures
- No secured debentures can be issued with a redemption period beyond ten years from the date of the issue; A company engaged in setting up infrastructure projects can issue debentures which are redeemable not beyond thirty years from the date of the issue



- A company (including manufacturing / infrastructure) issuing NCDs to create DRR equivalent to atleast 25% of the amount raised by the debenture issue before the debenture redemption commences
- No DRR by All India Financial Institutions and Banking Companies for debentures issued;
- NBFCs registered under RBI Act to create DRR of 25% for debentures issued through public issue; No DRR in case of privately placed debentures by them
- The company shall on or before 30th April each year invest or deposit a sum which is not less than 15% of the amount of its debentures maturing during the year ending on 31st day of March of the next year (As per Rules)
- DRR shall not be utilised by the company except for the purpose of redemption of debentures

SEBI Debt Issue Regulations



भारतीय प्रतिभूति और विनियम बोर्ड
Securities and Exchange Board of India

The NCDs may be listed on the Wholesale Debt Market (“WDM”) segment of recognized stock exchange in accordance with the Debt Issue Regulations issued by SEBI and the Listing Agreement which governs the issue and listing of NCDs

Issue of debenture on private placement basis



- In terms of the Debt Issue Regulations, the Company interested in issuing NCDs for the purpose of raising debt should be able to list its NCDs, issued on a private placement basis, subject to *inter alia* the following conditions being fulfilled:
- NCDs have been in compliance with the provisions of the Companies Act
- Credit rating has been obtained in respect of such NCDs from at least one credit rating agency registered with SEBI
- Appointment of Debenture Trustee
- NCDs proposed to be listed are in dematerialized form

Issue of debenture on private placement basis



- Also, the Company has to make necessary disclosures under Regulation 21 of the Debt Issue Regulations for listing unsecured debt securities (NCDs) issued on private placement as prescribed under Schedule I of Debt Issue Regulations which include nature of debt securities and mode of issue i.e. public issue or private placement
- Under the Debt Issue Regulations, the issuer has to maintain 100% asset cover (and not security cover) in respect of the principal amount raised through the NCDs at all times the NCDs are listed

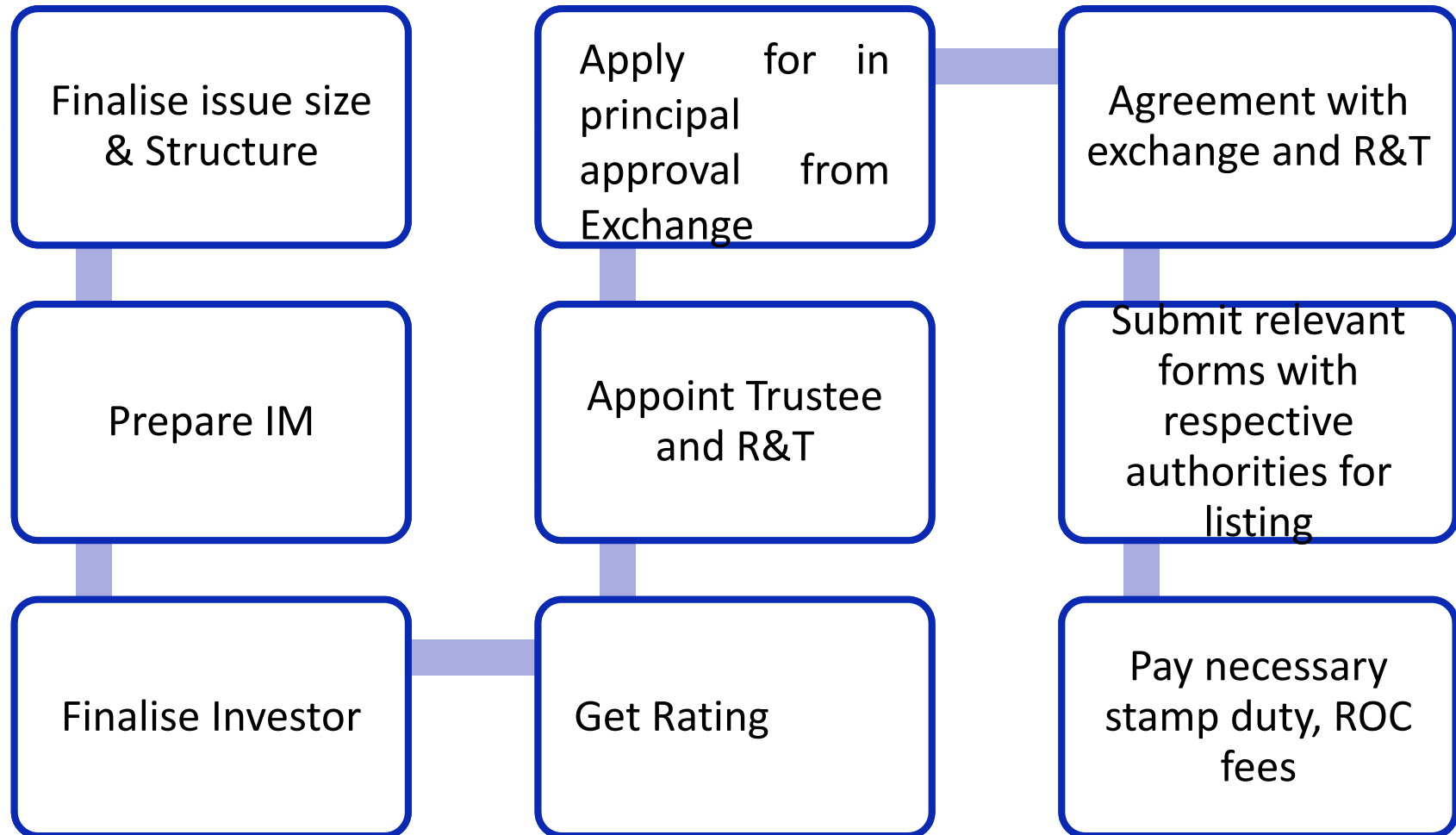
Steps Involved



The issuance of NCD would entail the following steps:

- Obtaining electronic connectivity from the DP.
- Obtaining credit rating
- Approval of shareholders in terms of section 42 of CA, 2013
- Execution of debenture trustee agreement with the debenture trustee
- Execution of Debenture Subscription Agreement (“DSA”) / Information Memorandum (“IM”) and other commercial considerations
- Obtaining in principal approval from the stock exchange
- Allotment of debentures
- Filing of final listing application with the stock exchange

Activity List



Additional Conditions - Public Issue of Debentures



- Under Public Offering should be open to public, whereas under private placement company can choose its own investors
- Issue of Prospectus is Compulsory
- The issuer shall appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker
- The issuer shall not issue debt securities for providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management



Agencies Involved

Rating Agency	CRISIL, ICRA, CARE, India Ratings (Fitch), Brickworks and SMERA
SEBI registered Debenture Trustees	http://www.sebi.gov.in/sebiweb/home/detail/154/new/Registered-Debenture-Trustees .
Stock Exchange	NSE or BSE
Depository	NSDL & CDSL
Stamp duty	Preferred route for payment of stamp duty of 0.5% per year but not exceeding 0.25.
Registrar & Transfer Agents (RTA)	Preferable to use the same RTA if the shares of the company are dematerialized



On Going Compliances

Credit Rating

Obtain credit rating periodically

Half-yearly compliance certificate

The Issuer shall forward to the debenture trustee promptly, whether a request for the same has been made or not, a half-yearly certificate regarding maintenance of 100% asset cover in respect of listed debt securities, by either a practicing company secretary or a practicing chartered accountant, along with the half yearly financial results

Publication of audited financials on half-yearly basis

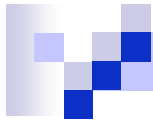
The investee should publish its limited review/ audited financials results every six months in a leading daily

If equity listed:

The Issuer agrees that while submitting the half yearly/ annual results, it shall:

separately indicate the following line items after the item Earnings Per Share:

- (a) debt service coverage ratio; and
- (b) interest service coverage ratio.



On Maturity

Debenture redemption reserve	Not applicable for NBFCs if issued on private placement basis.
De-list on repayment	The investee should inform the stock exchange on repayment for de-listing
Debit corporate Action	The investee should initiate debit corporate action post repayment to extinguish the units



Ambit of Listed Companies as per Companies Act, 2013

Ambit of Listed Companies as per Companies Act, 2013

A company which has any of its securities listed on any recognized stock exchange.

The company even if having its debentures/preference share listed on any recognized stock exchange is now deemed to be considered as the Listed Company.

Additional compliance for private companies on listing of debentures



- Appointment of Independent Directors in terms of CA, 2013 in terms of section 177
- Implementation of vigil mechanism
- Formation of nomination & remuneration committee
- Appointment of women director
- Applicability of Secretarial audit
- Appointment of KMP
- Maintenance and inspection of documents in electronic form
- Publish Results.

Tricky Issues



- Valuation of Debenture in terms of Section 42 of CA, 2013
- Payment of stamp duty for issue of debenture in Demat form
- Ambit of listed company in terms of CA, 2013

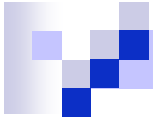
Listed Debentures VS ECB



Listed Debentures are excluded from the purview of ECB and hence, the criteria viz. eligible borrowers, eligible lenders, end-use requirements etc. applicable to ECBs, is not applicable in the case of NCDs.



Company X is the business of retailing of certain FMCG products. In terms of the FDI regulations, FDI in multi brand is allowed subject to certain stringent conditions. The Company wants to avail funds from one of the prospective investors in the form of equity or debt. The Company is not satisfying the conditions required for availing FDI in retail. The ECB norms will not be adhered as the Company wants to use the amount for working capital.



Questions



