

Note



Detailed Procedure for Listing of Privately Placed Debentures

Aman Nijhawan

aman@vinodkothari.com

Niddhi Parmar

nt@vinodkothari.com

Vinod Kothari & Company
Corporate Law Services Group
corplaw@vinodkothari.com

February 28, 2015

Check at:

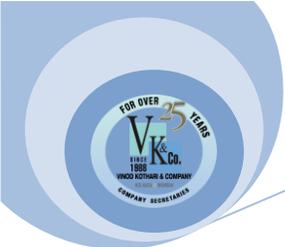
<http://india-financing.com/staff-publications.html>
for more write ups.

Copyright:

This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.



Note

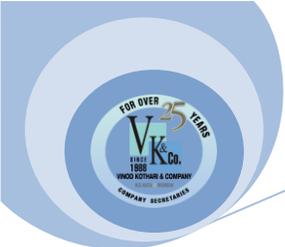
Private placement means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of private placement offer letter.

Section 42 of the **Companies Act, 2013 (“Act, 2013”)** read along with **Rule 14 of Companies (Prospectus of Securities) Rules, 2014** lays down provisions for issuing Securities under private placement, some of the provisions are covered below:

- ❖ Maximum number of allottees 200 in a financial year;
- ❖ Company shall not make any fresh issue unless the allotment w.r.t any offer made earlier have not been completed;
- ❖ Company need to allot its securities within 60 days from the date of receipt of application money;
- ❖ Maximum subscription per investor need to be Rs. 20,000 of Face value of the securities.

DETAILED PROCEDURE FOR LISTING OF PRIVATE PLACED DEBENTURES		
Internal Procedure To Be Adopted By Company		
<ul style="list-style-type: none"> • Passing of Board Resolution as envisaged under power of Board under Section 179(3)(c) of Act, 2013 • Appointment of Debenture Trustee and . • Obtaining a credit rating from atleast one Credit Rating Agency (“CRA”) registered with SEBI which shall not be more than a month older than the offer date as per SEBI (ILDS) regulations • Appointment of Registrar and Share Transfer Agent (“RTA”) and take consent from them • Execution of Tripartite Agreement between the company, RTA and Depository 		
Step	Entity involved	Documentation required
TRIPARTITE AGREEMENT (To be entered between Issuer, RTA and Depositories i.e. NSDL or	NSDL	Tripartite Agreement to be entered on Rs. 100/- stamp paper / franked for Rs. 100/-, duly stamped & signed on all the pages , should be in triplicate (i.e.- 1 original + 2 photocopies, duly stamped & signed on all the pages of three copies) Tripartite Agreement need to be as per Standard draft prescribed by NSDL ¹
	CDSL	Tripartite Agreement to be entered on Rs. 300/- stamp paper /

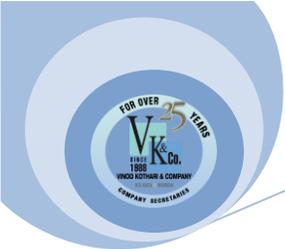
¹ <https://nsdl.co.in/downloadables/Agreement.doc>



Note

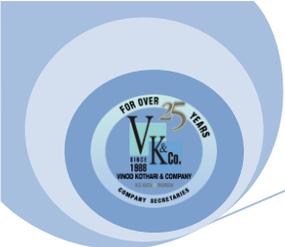
CDSL)		<p>franked for Rs. 300/-, duly stamped & signed on all the pages , should be in triplicate (i.e.- 1 original + 2 photocopies, duly stamped & signed on all the pages of three copies)</p> <p>Tripartite Agreement need to be in accordance with the draft prescribed by CDSL²</p>
For Applying ISIN no.	NSDL	<ul style="list-style-type: none"> • Letter of Intent • Master Creation form • Certified true copy of last two years' Audited Balance Sheets • Certified true copy of Memorandum & Article of Association • A brief profile of the Company (On the letterhead of Company) • Net worth Certificate from C.A • Undertaking from the company (if the Company is Pvt. Ltd.) • List of Authorized Signatory with specimen signatures & Board Resolution • Confirmation Letter of RTA
	CDSL	<ul style="list-style-type: none"> • Master Creation form (Part A and Part B) duly filled, signed and stamped on every page of MCF • Certified true copy of annual report for the last financial year • Certified true copy of Memorandum & Article of Association • Certified true copy of Board Resolution for admission of debt with CDSL • Certified true copy of the listing certificate/ in principle listing certificate in case debt instrument are listed/ proposed to be listed on stock exchange (OPTIONAL) • Soft copy of security details in excel format • Certified true copy of offer document, if any.
In principal approval	BSE	<ul style="list-style-type: none"> • Copy of the Disclosures as required by Regulations 21, as per the format prescribed in schedule ' I ' of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 & Amendment, 2012. (Hard and Soft copy in PDF format, of the disclosure should be

² <http://www.cdslindia.com/downloads/byelaws/Tripartite%20Agreement.pdf>



Note

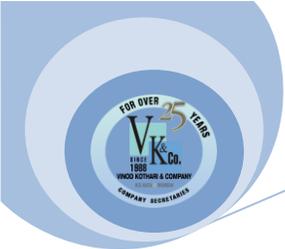
		<p>submitted)</p> <ul style="list-style-type: none"> • Credit rating certificate of the proposed issue. • Confirmation/consent letters from the Debenture Trustee w.r.t. their consent to act as Debenture Trustee for the proposed issue. • Copy of Article of Association (AOA) • Previous year's Audited Annual Report (only in case of the issuer seeking listing of its Debt instruments for the first time).
	NSE	<ul style="list-style-type: none"> • Soft copy in pdf format and certified true copy of draft Disclosure document prepared as per SEBI (Issue and Listing of Debt securities) Regulations, 2008 and amendments thereto. • Self-certification from the company secretary or authorized signatory confirming that the Disclosure document has been prepared as per SEBI (Issue and Listing of Debt securities) Regulations, 2008 and amendments thereto. • Confirmation of the credit rating registered with the Board for the proposed issue • Consent letter from the Debenture Trustee • Audited Annual Reports for the last three years • Memorandum and Articles of Association
Listing agreement	NSE & BSE	<ul style="list-style-type: none"> • Enter into Listing Agreement with the Stock Exchanges where the security are proposed to be listed
Registration with SEBI for SCORES	SEBI	<ul style="list-style-type: none"> • Registration on SCORES for online complaint redressal system
Open Separate Bank Account		<ul style="list-style-type: none"> • The Company should open a separate bank account (i.e. Escrow account) in which the Application money received on subscription of securities shall be kept.
Allotment		<ul style="list-style-type: none"> • Pass board Resolution for approval of allotment
LOA		<ul style="list-style-type: none"> • Issue Letter of allotment to the holders
Corporate Action	NSDL	<ul style="list-style-type: none"> • File corporate action for Letter of allotment



Note

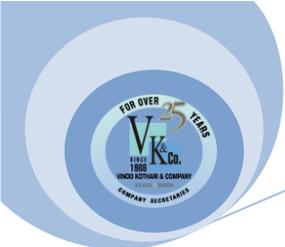
	CDSL	<ul style="list-style-type: none"> File corporate action <p>Attachments along with form:</p> <ul style="list-style-type: none"> Details of Allotment / Corporate Action Information Certified copy of the Board Resolution approving the allotment Certified copy of the Shareholders Resolution passed in the AGM/ EGM approving the allotment Certified copy of the in-principle approval for listing from the Stock Exchanges where the securities will be listed Request letter from the RTA for submission of file for allotment.
Form to be filed	ROC	<ul style="list-style-type: none"> File Form PAS-3 for return of allotment and Form PAS-4 and Form PAS-5 as an attachment to Form GNL-2 with ROC
File charge creation with ROC	ROC	<ul style="list-style-type: none"> Form CHG-9 to be filed in favor of Debenture Trustee. Entry to be made in register of charges
Trust Deed	Debenture Trustee	<ul style="list-style-type: none"> Debenture Trust Deed to be executed within 60 days from allotment
Corporate Action for conversion of LOA to Debentures	NSDL	<ul style="list-style-type: none"> Corporate action for conversion of Letter of allotment to Debenture
	CDSL	<ul style="list-style-type: none"> Make a request for conversion of LOA to Debenture. (No form Mentioned)
Final listing and trading approval	BSE³	<ul style="list-style-type: none"> Application need to be made for listing of privately placed debt securities (<i>as per the format prescribed by BSE – This Application need to be submitted by the company on its Letterhead</i>) <p>List of Documents required to be attached:</p> <ul style="list-style-type: none"> Letter of Application (<i>by listed companies applying for listing of further issue</i>) Issue details of the new securities issued (<i>to be filled separately for each ISIN</i>) Certified copy of the resolution passed by board of directors

³ <http://www.bseindia.com/Static/about/PPDI.aspx?expandable=2>



Note

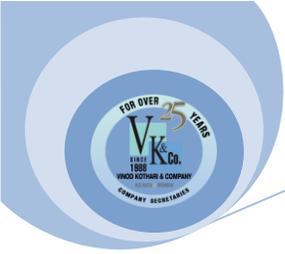
		<p>for allotment of debt securities.</p> <ul style="list-style-type: none"> • Certified copy of the Special resolution passed by the shareholders along with Notice • Certified copy of Credit Rating Certificate obtained before issuing the Debt instruments from Credit Rating Agency and their validity period • Certified copy of confirmation letter from the debenture Trustee intimating the company that they are acting as the debenture trustee of these debt instruments. • Certified copy of letter issued by Depositories (NSDL/CDSL) intimating about the allotment of the ISIN (<i>final ISIN after conversion of LOA</i>) for these securities • Certified copy of the Debenture Trust Deed (upon execution) • Certificate from the Managing Director/Company Secretary of the company (<i>on the letterhead of the company</i>) • Company shall provide an undertaking that the payment to be received for subscription to securities has been received from the bank account of the person subscribing to such securities or provide a Statutory Auditors Certificate certifying the same • In case of listing of a structured product as defined in the SEBI Circular dated September 28, 2011, a certificate from the Managing Director/Company Secretary of the company (<i>on the letterhead of the company</i>) • Confirmation for authentication on SEBI for SCORES • The company should pay applicable Annual Listing fees , along-with service tax @ 12.36% for the year, as per attached fee schedule • Soft copy in pdf form and certified true copy of Disclosure document (Offer Document) prepared as per Schedule I of the SEBI (Issue and Listing of Debt Securities) Regulations,2008 and SEBI (Issue and Listing of Debt Securities) Regulations, 2012 as amended from time to time • Debt Listing Agreement • Statement containing particulars of dates of, and parties to all material contracts and agreements
--	--	--



Note

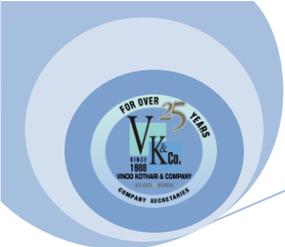
		<ul style="list-style-type: none"> • RBI Certificate confirming whether the issuer is deposit taking or non-deposit taking (<i>applicable in case of NBFC</i>) • Memorandum and Articles of Association of the company • Copy of latest audited Balance Sheet and Annual Report
	NSE ⁴	<ul style="list-style-type: none"> • Application Form for listing of securities on WDM Segment of NSE (<i>as per the format prescribed</i>) <ol style="list-style-type: none"> Part A – <i>to be submitted for all the ISINs to be listed;</i> Part B – <i>application for listing – to be submitted for first and all subsequent issues;</i> Part C – <i>to be submitted for first issue only.</i> • List of documents required to be attached: • Listing Agreement • Resolution passed by the shareholders at the AGM/EGM with respect to borrowings • Approval from Ministry of Finance/RBI/any other government authority if applicable (<i>Generally in case of Govt. Companies and banks</i>) • Resolution passed by the Board of Directors for authorising the issue • Approval of the Board of Directors for allotment of securities/ confirmation that the allotment has been done • Letter issued by the depositories(NSDL and CDSL) allotting the ISIN Code giving details of the instrument • Credit Confirmation letter of the depositories • Letter issued by credit rating agency • List of allottees • Certificate of Tax Exemption, if applicable • RBI Certificate confirming whether the issuer is deposit taking or non-deposit taking (<i>applicable in case of NBFC</i>) • Copies of the audited Annual Reports for the last three years (<i>to be submitted only once in a financial year</i>). • Memorandum and Articles of Association (<i>to be submitted with the first listing application and whenever there is a change in the document</i>)

⁴ http://www.nseindia.com/corporates/content/debt_pvt_plcment.htm



Note

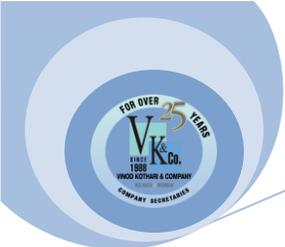
		<ul style="list-style-type: none">• Copy of latest audited balance sheet. If the Annual Report contains the latest audited balance sheet than the issuer may not provide it separately.• Soft copy in pdf form and certified true copy of Disclosure document (Offer Document) prepared as per Schedule - I of the SEBI (Issue and Listing of Debt securities) Regulations, 2008 and amendments thereto.• Self certification from the company secretary or authorized signatory by the Board confirming that the issuer has followed the SEBI (Issue and Listing of Debt securities) Regulations, 2008, provisions of the Companies Act, 1956, rules prescribed thereunder and other applicable laws.• Debenture Trust Deed/Consent letter of the Debenture Trustee. If Debenture Trust Deed is not executed than undertaking from the Company Secretary or authorized signatory confirming that they will execute the Trust Deed within three months of the closure of the issue and submit the certified true copy to the exchange.• Self certification from the company secretary or authorized signatory by the Board confirming that the offer document has been prepared as per SEBI (Issue and Listing of Debt securities) Regulations, 2008 and amendments thereto.• Statement containing particular of, date of and parties to all material contracts and agreements.• An undertaking from the issuer stating that the necessary documents for the creation of the charge, where applicable, including the Trust Deed would be executed within the time frame prescribed in the relevant regulations/act/rules etc and the same would be uploaded on the website of the Designated Stock exchange, where the debt securities have been listed, within five working days of execution of the same.• An undertaking that permission / consent from the prior creditor for a second or pari passu charge being created, where applicable, in favor of the trustees to the proposed issue has been obtained.• Confirmation from the issuer regarding the receipt of the
--	--	--



Note

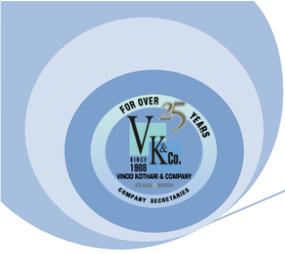
		SCORES ID from SEBI.										
Processing Fees	NSDL	An Issuer of unlisted securities shall pay a joining fee of Rs. 30,000 plus taxes at the applicable rate at the time of joining NSDL, for the purpose of making its shares available for dematerialization. Provided however that in case the Issuer gets its securities listed on any recognised stock exchange within one year of joining NSDL, the joining fee paid by the Issuer will get adjusted against the one time custody fee or Annual Custody Fee, as the case may be.										
		If an issuer gets its securities delisted from all stock exchanges where its securities were listed, it shall pay joining fee of Rs. 30,000 plus taxes at the applicable rate.										
	CDSL	A non-refundable processing fee of Rs. 20,000 (INR) plus applicable taxes, shall be payable by Issuers for admission of listed and/or unlisted securities.										
		A non-refundable processing fee of Rs. 20,000 (INR) plus applicable taxes shall be payable by Issuers for the removal of unlisted securities.										
Annual Custodian Fees	NSDL & CDSL	<p>The annual custody fee⁵ payable by Issuers are based on the greater of 8.00(INR)* per folio (ISIN position) in the depository or the nominal value of admitted securities as per the table mentioned below.</p> <table border="1"> <thead> <tr> <th>Nominal Value of admitted securities (INR)</th> <th>Annual Custodial Fee Payable by an Issuer to the Depository (INR)*</th> </tr> </thead> <tbody> <tr> <td>Upto 5 crores</td> <td>6,000 per annum</td> </tr> <tr> <td>Above 5 crores and upto 10 crores</td> <td>15,000 per annum</td> </tr> <tr> <td>Above 10 crores and upto 20 crores</td> <td>30,000 per annum</td> </tr> <tr> <td>Above 20 crores</td> <td>50,000 per annum</td> </tr> </tbody> </table> <p>* Plus service tax as applicable (i.e 12.36% at present).</p>	Nominal Value of admitted securities (INR)	Annual Custodial Fee Payable by an Issuer to the Depository (INR)*	Upto 5 crores	6,000 per annum	Above 5 crores and upto 10 crores	15,000 per annum	Above 10 crores and upto 20 crores	30,000 per annum	Above 20 crores	50,000 per annum
Nominal Value of admitted securities (INR)	Annual Custodial Fee Payable by an Issuer to the Depository (INR)*											
Upto 5 crores	6,000 per annum											
Above 5 crores and upto 10 crores	15,000 per annum											
Above 10 crores and upto 20 crores	30,000 per annum											
Above 20 crores	50,000 per annum											

⁵ http://www.sebi.gov.in/cms/sebi_data/attachdocs/1290147144899.pdf



Note

		<p>** SEBI circular for annual Issuer charges</p> <p>The fee will be charged every year on a financial year basis and shall be payable by April 30 of that financial year.</p>														
Penalty if the issuer fails to pay the fees mentioned under Annual Custodian Fees		<p>If an Issuer fails to pay the fees mentioned under "Annual Custody Fee" by the due date, the Depository may charge interest @ 12% p.a. on the amount, from the due date of payment till the payment is received by the Depository. Provided further that the Depository may stop providing details of clients / clearing members / clearing corporation / intermediary to the Issuer and / or its Registrar and Transfer Agent as mentioned in the Bye Laws and BusinProvided further that the Depository may not permit the Issuer to use its infrastructure including for issue of further securities in electronic form.ess Rules.</p>														
Listing Fees	NSE	<p>The listing fees depend on the issue size:</p> <table border="1"> <thead> <tr> <th>Particulars</th> <th>Amount (RS.)</th> </tr> </thead> <tbody> <tr> <td>Initial Listing Fees</td> <td>7,500</td> </tr> <tr> <td>Annual Issue Size</td> <td>Listing fees</td> </tr> <tr> <td>Upto 5 crores</td> <td>2,750</td> </tr> <tr> <td>Above 5 crores and upto 10 crores</td> <td>4,000</td> </tr> <tr> <td>Above 10 crores and upto 20 crores</td> <td>7,750</td> </tr> <tr> <td>Above 20 crores</td> <td>7,700</td> </tr> </tbody> </table> <p>Issuers which have applied for listing of issue size more than Rs. 20 crores would be charged an additional listing fees of Rs. 200/- for every increase of Rs. 1 crore or part thereof in the issue size (in Rs.) subject to a maximum of Rs. 30,000/-.</p> <p>Annual listing fee payable by an Issuer is limited to a maximum of Rs. 5.50 lacs.</p>	Particulars	Amount (RS.)	Initial Listing Fees	7,500	Annual Issue Size	Listing fees	Upto 5 crores	2,750	Above 5 crores and upto 10 crores	4,000	Above 10 crores and upto 20 crores	7,750	Above 20 crores	7,700
Particulars	Amount (RS.)															
Initial Listing Fees	7,500															
Annual Issue Size	Listing fees															
Upto 5 crores	2,750															
Above 5 crores and upto 10 crores	4,000															
Above 10 crores and upto 20 crores	7,750															
Above 20 crores	7,700															
	BSE	<p>The listing fees depend on the issue size:</p> <table border="1"> <thead> <tr> <th>Particulars</th> <th>Amount (RS.)</th> </tr> </thead> <tbody> <tr> <td>Initial Listing Fees</td> <td>NIL</td> </tr> <tr> <td>Annual Issue Size</td> <td>Listing fees</td> </tr> <tr> <td>Upto 5 crores</td> <td>2,500</td> </tr> <tr> <td>Above 5 crores and upto 10 crores</td> <td>3,750</td> </tr> <tr> <td>Above 10 crores and upto 20 crores</td> <td>7,500</td> </tr> </tbody> </table>	Particulars	Amount (RS.)	Initial Listing Fees	NIL	Annual Issue Size	Listing fees	Upto 5 crores	2,500	Above 5 crores and upto 10 crores	3,750	Above 10 crores and upto 20 crores	7,500		
Particulars	Amount (RS.)															
Initial Listing Fees	NIL															
Annual Issue Size	Listing fees															
Upto 5 crores	2,500															
Above 5 crores and upto 10 crores	3,750															
Above 10 crores and upto 20 crores	7,500															



Note

		Above 20 crores	Additional fee of Rs.200/- for every increase of Rs.1 Crore or part thereof above Rs.20 Crores. Subject to a maximum of Rs. 30,000/- per instrument.
		Cap on the annual listing fee of debt instruments per issuer to Rs. 5,00,000/- per annum. Service Tax is payable on listing fees @ 12.36%.	

Also see our other related write-ups:

On Companies Act: [Click here](#)

On Bond Market: [Click here](#)