

**Bill No. 98 of 2006**

**THE SECURITIES CONTRACTS (REGULATION) AMENDMENT  
BILL, 2006**

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**BILL**

*further to amend the Securities Contracts (Regulation) Act, 1956.*

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Securities Contracts (Regulation) Amendment Act, 2006.

Short title.

42 of 1956. 5

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

Amendment of section 2

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"(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. After section 17 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 17A.

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"17A. (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.

Public issue and listing of securities referred to in sub-clause (ie) of clause (h) of section 2

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(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, 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.

Amendment  
of section 23.

4. 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 17A" shall be substituted.

Amendment  
of section 31.

5. 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 4B 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 17A."

## 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.

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 17A 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.

NEW DELHI,  
*The 7th December, 2006.*

P. CHIDAMBARAM.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill proposes to amend section 31 of the Securities Contracts (Regulation) Act, 1956 so as to confer power upon the Securities and Exchange Board of India to make regulations on matters such as the eligibility criteria and other requirements to be complied with by the issuers of securitised certificates or instruments.

2. The regulations made by the Securities and Exchange Board of India shall be laid, as soon as may be, after they are made, before each House of Parliament.

3. The matters in respect of which regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 OF 1956)

	*	*	*	*	*
Definitions.	2.	In this Act, unless the context otherwise requires,—			
	*		*	*	*
		(h) "securities" include—			
	*		*	*	*
Penalties.	23.	(1) Any person who—			
	*		*	*	*
		(c) contravenes the provisions contained in section 17, or section 19; or			
	*		*	*	*
Power of Securities and Exchange Board of India to make regulations.	31.(1)*		*	*	*
		(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for 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 4B by the public other than the shareholders having trading rights under sub-section (8) of that section.			

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**further to amend the Securities Contracts (Regulation) Act, 1956.**

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*(Shri P. Chidambaram, Minister of Finance)*

