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SCALING THE ORANGE BOND ASSET CLASS

A STRATEGIC LEGAL OVERVIEW FOR INVESTORS, ISSUERS, AND ADVISORS WITH LEGAL FRAMEWORKS AND INSIGHTS FROM THE WOMEN'S LIVELIHOD BOND™ SERIES

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Scaling the Orange Bond Asset Class:
A Strategic Legal Overview for
Investors, Issuers, and Advisors
with Legal Frameworks and Insights
from the Women's Livelihood Bond™ Series

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Background: Gender Inequality in Southeast Asia

The United Nations has set 17 Sustainable Development Goals (SDGs) as part of its 2030 Agenda for Sustainable Development.¹ SDG5 is set to achieve gender equality and empower all women and girls.²

Gender equality, SDG5, has a positive correlation with other SDGs.³ Closing gender gaps can enhance productivity in agriculture to improve food security, the SDG2. Additionally, gender equality supports health (SDG3) and education outcomes (SDG4). Success in SDG5 leads to overall better development outcomes across various sectors, pushing the UN's 2030 agenda further.⁴ Moreover, policies that target gender equality are less likely to create negative interactions with other SDGs.⁵

The Gender Inequality Index (GII) measures gender inequality within a region. A high GII value indicates high inequality. The data shows that Asia and the Pacific region improved their scores between 1991 and 2021, but South Asia and the Pacific still face notable gender

inequality.⁶ Southeast Asia's GII is still above or near 0.5.⁷ From 2020 to 2021, the GII in Pacific and South Asia even slid backward.⁸

Women's financial inclusion, asset control and ownership, financial resilience, and entrepreneurship promote gender equality.⁹ Similar to a Chinese proverb that "give a woman a fish and you feed her for a day; teach a woman to fish and you feed her for a lifetime," financial gender inequalities should not be limited solely to improving a woman's standard of life and her ability to withstand economic shock.¹⁰ Promoting women entrepreneurs is a more sustainable way to address gender inequality.¹¹ Women entrepreneurs can also bring diversity of thought, indigenous knowledge, and innovation, extending benefits to their families and communities and becoming key drivers of economic growth.¹²

Despite compelling empirical evidence highlighting the economic and social benefits of women's entrepreneurship, women's participation in business ownership still faces challenges.¹³ To

¹ United Nations, *Sustainable Development Goals*, United Nations, <https://sdgs.un.org/goals> (last visited Nov. 9, 2024).

² United Nations, *Goal 5: Achieve Gender Equality and Empower All Women and Girls*, United Nations, <https://sdgs.un.org/goals/goal5> (last visited Nov. 9, 2024).

³ Måns Nilsson, *Understanding and Mapping Important Interactions Among SDGs*, U.N., at 14, <https://sustainabledevelopment.un.org/content/documents/12067Understanding%20and%20mapping%20important%20interactions%20among%20SDGs.pdf> (last visited Nov. 9, 2024).

⁴ *Id.*

⁵ *Id.* at 15.

⁶ *Making Our Future: New Directions for Human Development in Asia and the Pacific*, U.N. Dev. Programme, at 21, <https://www.undp.org/asia->

[pacific/publications/making-our-future-new-directions-human-development-asia-and-pacific](https://www.undp.org/asia-pacific/publications/making-our-future-new-directions-human-development-asia-and-pacific) (last visited Nov. 9, 2024).

⁷ *Id.*

⁸ *Id.* at 28.

⁹ *Financial Resilience, Inclusion and Entrepreneurship: Is Asia and the Pacific on Track to Close the Gender Gap?*, U.N. Econ. & Soc. Comm'n for Asia & the Pac., at 5, <https://www.unescap.org/kp/2024/financial-resilience-inclusion-and-entrepreneurship-asia-and-pacific-close-gender-parity> (last visited Nov. 9, 2024).

¹⁰ *Id.* at 56.

¹¹ *Id.*

¹² *Id.*

¹³ *Investing in Women: More Than Just Good Economics, It's Crucial for a Sustainable Society*, U.N. Econ. & Soc. Comm'n for Asia & the Pac. (Sept. 5,

resolve this gender disparity in Asia, the Asian Development Bank (ADB) issued gender bonds to scale up women's access to finance their businesses.¹⁴ Gender bonds are “use-of-proceeds” bonds dedicated to financing women-led small and medium enterprises.¹⁵ The bonds have moved gender equality standards forward since its first issuance in Southeast Asia in 2017.¹⁶

Some progress has been achieved, but it is not distributed equally among Southeast Asian countries and is insufficient overall. As of 2023, 40.4% of Cambodian firms had female participation in their ownership. The statistics were 40.9% in Malaysia as of 2019.¹⁷ In contrast, this gender gap is still significant in other Southeast Asia countries. As of 2022, only 3.9% of Indian firms have female participation in their ownership. The statistic is 6.7% in Bangladesh as of 2022, 36.5% in Laos as of 2018, and 24.8% in Vietnam as of 2023.¹⁸

With six years remaining for the UN's 2030 agenda, we are off-track to meet 2030 SDGs globally.¹⁹ Gender equality in Southeast and South Asia still faces significant challenges.²⁰ ADB defined several limitations of its gender bonds:

2023), <https://www.unescap.org/blog/investing-women-more-just-good-economics-its-crucial-sustainable-society> (last visited Nov. 9, 2024).

¹⁴ *How to Accelerate Growth of the Gender Bonds Market*, Asian Dev. Bank (June 27, 2023), <https://development.asia/explainer/how-accelerate-growth-gender-bonds-market> (last visited Nov. 9, 2024).

¹⁵ *Id.*

¹⁶ *Gender Bonds: Incidental or Center Stage?*, Asian Dev. Bank, at 4, <https://www.adb.org/sites/default/files/publication/861396/adb-brief-243-gender-bonds-incident-center-stage.pdf> (last visited Nov. 9, 2024).

¹⁷ World Bank, *Proportion of Firms with Female Participation in Ownership*, World Bank,

namely, small market size and low issuer participation, the complexity of gender bonds structure and the lack of guidance, high administration cost, ineffective social impact measurement, and limited private sector participation.²¹

Southeast Asia needs more effective financial instruments to promote gender equality. This toolkit introduces the Orange Bonds: the world's first asset class built by and for the Global South and the 99% of them serve as a solution to financing gender equality. Uniquely cross-cutting, the Orange Bond asset class supports not only gender equity but also drives climate resilience, economic prosperity, and sustainable peace.

<https://genderdata.worldbank.org/en/indicator/ic-firm-femo-zs#idRelatedIndicators> (last visited Nov. 9, 2024).

¹⁸ *Id.*

¹⁹ *World Way Off Track on Achieving Most Development Goals*, DevelopmentAid (Sept. 13, 2023), <https://www.developmentaid.org/news-stream/post/181218/world-way-off-track-on-achieving-most-development-goals> (last visited Nov. 9, 2024).

²⁰ *Id.*

²¹ *Gender Bonds: Incidental or Center Stage?*, Asian Dev. Bank, at 4–6, <https://www.adb.org/sites/default/files/publication/861396/adb-brief-243-gender-bonds-incident-center-stage.pdf> (last visited Nov. 9, 2024).

Introduction of this Toolkit

To further SDG5 and advance gender equality, Impact Investment Exchange (IIX) took the color “orange” representing SDG5, and initiated the Orange Movement™.²² IIX is a global leader in sustainable finance working at the nexus of gender equality and climate action. The Movement’s mission is to “mobilize US\$10 billion by 2030 to empower 100 million women, girls, and gender minorities to drive gender-transformative climate action, sustainable peace, and economic prosperity.”²³ IIX launched the Orange Bond Initiative™ (OBI), an asset class, as “an integral component of the Orange Movement.”²⁴

One of IIX’s most successful Orange-Bonds-labeled projects is the Women’s Livelihood Bond™ (WLB™) series. WLB™ is “an innovative gender-lens blended financial product that qualifies as Orange bonds.”²⁵ WLB™ functions as a debt security with a blended finance structure to balance risk, return, and impact.²⁶ WLB5 is the world’s first Orange Bond dedicated to SDG5 and gender minority empowerment.²⁷ The

latest issuance was WLB6 in 2023.²⁸ WLB6 is the largest WLB as of date. WLB6 reached an unprecedented size for gender-based investment bonds of US\$100 million, with a 7.25% coupon rate.²⁹ WLBs “has mobilized US\$228 million and empowers 2,600,000 women and girls across emerging markets while providing consistent returns with no defaults recorded.”³⁰ WLB is a successful financial instrument that accelerates the progress of SDG5.

This toolkit examines the Orange bonds, and their legal structures, using Women Livelihood Bond™ (WLB™) 6 as a case study.

The purpose is to introduce the legal framework for Orange Bonds to institutional and sophisticated investors and service providers, such as law firms and sustainability consultants, as well as potential issuers of Orange Bonds. Meanwhile, this toolkit will deliver comprehensive, practical insights to deepen understanding of WLB6’s structure for a broader audience.

This toolkit’s Annex examines how one of the Orange Bonds’ regional borrowers in India uses alternative debt instruments,

²² Orange Movement, *Home Page*, Orange Movement, <https://orangemovement.global/> (last visited Nov. 9, 2024).

²³ *Id.*

²⁴ Orange Bond Initiative, *Orange Bond Initiative*, Impact Investment Exchange, <https://iixglobal.com/orange-bond-initiative/> (last visited Nov. 9, 2024).

²⁵ Impact Investment Exchange, *Women’s Livelihood Bond™ Series*, Impact Investment Exchange, <https://wlb.iixglobal.com/> (last visited Nov. 9, 2024).

²⁶ *Id.*

²⁷ Impact Investment Exchange, *Impact Investment Exchange (IIX) Closes the Women’s Livelihood Bond™ 5 – the Fifth Issuance in the Women’s Livelihood Bond™ Series and the World’s First Orange Bond*, Impact Investment Exchange (Dec. 8, 2022), <https://iixglobal.com/impact-investment-exchange->

[iix-closes-the-womens-livelihood-bondtm-5-the-fifth-issuance-in-the-womens-livelihood-bond-series-and-the-worlds-first-orange-bond/](https://iixglobal.com/impact-investment-exchange-) (last visited Nov. 9, 2024).

²⁸ Impact Investment Exchange, *IIX’s Women’s Livelihood Bond™ 6 Breaks New Ground with US\$100 Million Issuance as the Largest Orange Bond in the Market, Expected to Empower Over 880,000 Women and Girls in the Global South*, Impact Investment Exchange (Dec. 12, 2023), <https://wlb.iixglobal.com/iixs-womens-livelihood-bond-6-breaks-new-ground/> (last visited Nov. 9, 2024).

²⁹ *Id.*

³⁰ Impact Investment Exchange, *Women’s Livelihood Bond™ Series*, Impact Investment Exchange, <https://wlb.iixglobal.com/> (last visited Nov. 9, 2024).

specifically non-convertible debentures, to improve the liquidity of IIX's debt asset class. Liquidity refers to how easily debt assets, for example, the regional borrowers' loan portfolio can be converted into cash.³¹ Higher liquidity means lower risks in terms of the regional borrowers' overall financial health and their abilities to withstand liabilities.³² This helps regional borrowers attract more investors and secure them from defaulting on loan agreements with IIX.

³¹ *Liquidity*, Investopedia, <https://www.investopedia.com/articles/basics/07/liquidity.asp> (last visited Nov. 9, 2024).

³² *Id.*

Orange Bonds' framework

Orange Bonds' contours

Orange Bonds are bond instruments. Bonds are defined as the following, “Bonds are debt instruments and represent loans made to the issuer.”³³ Bonds are fixed-income securities.³⁴ When a borrower issues a bond, the borrower, either a public or private entity, must include the loan terms, interest rate, and maturity date.³⁵ The interest rate is called the coupon rate. The borrower is obliged to pay the coupon at a set term.³⁶ When a bond reaches maturity, the borrower fulfills its debt obligation by “paying bondholders the final interest payment and the bond’s face value, called par value.”³⁷

Orange Bonds are bonds governed by three Orange Bond Principles™.³⁸ An Orange Bond must have (1) gender-positive capital allocation, (2) gender-lens capacity and diversity in leadership, and (3) transparency in the investment process and reporting.³⁹ Guided by the Principles, OBI equips financial market practitioners with data analytic, market intelligence, and training to build a gender-empowered financial system.⁴⁰ OBI establishes standards for gender-lens bonds, which recognize the intersectionality of gender issues and

contribute to broader outcomes like climate action, social progress, and sustainable development. By providing a catalytic framework to mobilize financial resources through Orange Bonds, OBI empowers women, girls, and LGBTQI+ communities, helping to drive both gender equality and inclusive, sustainable growth.⁴¹

Orange Bonds' objectives

To fulfill the Orange Movement’s goal, OBI aims to transform the current financial system into a gender-empowered one. Orange Bond Principles™ resolve systemic problems in the current financial system, which are the lack of a systematic approach to gender equality, the lack of inclusive leadership, and the lack of transparency.⁴² Under the Principles’ guidance, OBI plans for a financial system that (1) “provides multi-dimensional options for proceeds to build gender equality,” (2) “mandates gender and racial representation on the investment committee and team,” and (3) “requires impact verification and confirmation directly with women, girls, LGBTQI+ people.”⁴³ Ultimately, achieving the goal of mobilizing US\$10 billion and empowering 100 million women, girls, and gender minorities by 2030.⁴⁴

³³ *Bond*, Investopedia, <https://www.investopedia.com/terms/b/bond.asp> (last visited Nov. 9, 2024).

³⁴ *Bonds*, Fin. Indus. Regulatory Auth., <https://www.finra.org/investors/investing/investment-products/bonds#overview> (last visited Nov. 9, 2024).

³⁵ *Id.*

³⁶ *Coupon Rate*, Investopedia, <https://www.investopedia.com/terms/c/coupon-rate.asp> (last visited Nov. 9, 2024).

³⁷ See *supra* note 34.

³⁸ *Orange Bond Principles*, Impact Investment Exchange, at 4 (Oct. 2022), [https://iixglobal.com/wp-](https://iixglobal.com/wp-content/uploads/2023/02/Orange-Bond-Principles.pdf)

[content/uploads/2023/02/Orange-Bond-Principles.pdf](https://www.investopedia.com/terms/b/bond.asp) (last visited Nov. 9, 2024).

³⁹ *Id.*

⁴⁰ *Orange Bonds & Activating the Advancement of Peace, Prosperity & Climate Action*, Vision of Humanity, at 3, <https://www.visionofhumanity.org/wp-content/uploads/2023/10/Orange-bonds-2023-061023.pdf> (last visited Nov. 9, 2024).

⁴¹ See *supra* note 38, at 5–7.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See *supra* note 28.

Orange Bonds' current participants

A six-member Orange Movement™ Steering Committee governs the OBI, as it exists today.⁴⁵ The Steering Committee is comprised of representatives from various public and private sectors who actively promote gender equality, including the Australian Department of Foreign Affairs and Trade (DFAT), the United States Development Finance Corporation (DFC), and others.⁴⁶ The United Nations Capital Development Fund (UNCDF) is also a member of the Orange Bond Initiative Advisory Council.⁴⁷ As a global initiative, the Orange Movement™ has attracted “249,000 signatories from all six continents to pledge into the Orange movement.”⁴⁸

Case Study on Orange Bonds' legal framework using WLB6 as an example

WLB6's creation

1. *This Issuer is a special purpose vehicle (SPV) with restricting covenants*

IIX is the Portfolio Manager. It created its fully-owned WLB Asset VI Pte. Ltd. (the Issuer), a corporation incorporated under the laws of Mauritius, to issue the bond.⁴⁹ The Issuer is a special purpose vehicle whose sole purpose is to issue the WLB6 and be obligated by this bond, and it has no operating history.⁵⁰ Any

claim against the Issuer regarding WLB6 by the bondholders is limited to the Issuer's net assets, which are the funds in the WLB6.⁵¹

Six restrictive covenants limit the Issuer's operation.⁵² First, the Issuer cannot create any security interest over its assets other than the WLB6 demands. Second, the Issuer cannot engage in businesses other than the issuance and operation of WLB6. Third, the Issuer cannot own any real property. Fourth, the Issuer cannot dispose of any of its assets that are not permitted by the structure and terms of WLB6. Fifth, the Issuer cannot be otherwise indebted.⁵³ Lastly, the Issuer cannot merge or consolidate with another entity, acquire a subsidiary, or have any employees.⁵⁴

2. *WLB6's size and purchasing terms*

The steps leading to the issuance of WLB6 were as follows. The Issuer issues US\$88,000,000 in aggregate principal amount of bonds, with a coupon rate of 7.25% and a maturity date of December 21, 2027. The coupon payment is made semi-annually (i.e., every six months).⁵⁵

Each bond has a minimum denomination of US\$250,000. A denomination refers to the unit classification for the stated or face value of bonds.⁵⁶ So, a bondholder must purchase a bond worth US\$250,000 or

⁴⁵ Orange Movement, *Governance*, Orange Movement, <https://orangemovement.global/governance> (last visited Nov. 9, 2024).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Women's Livelihood Bonds 6 Final Information Memorandum*, at 3–4 (Dec. 8, 2022), [https://links.sgx.com/FileOpen/WLB6%20-](https://links.sgx.com/FileOpen/WLB6%20-%20Final%20IM%20(8%20Dec%202023).ashx?App=Prospectus&FileID=61071)

[%20Final%20IM%20\(8%20Dec%202023\).ashx?App=Prospectus&FileID=61071](https://links.sgx.com/FileOpen/WLB6%20-%20Final%20IM%20(8%20Dec%202023).ashx?App=Prospectus&FileID=61071) (last visited Nov. 9, 2024).

⁵⁰ *Id.* at 45.

⁵¹ *Id.* at 18.

⁵² *Id.* at 102.

⁵³ *Id.* at 103.

⁵⁴ *Id.*

⁵⁵ *Id.* at 93.

⁵⁶ *Denomination*, Investopedia, <https://www.investopedia.com/terms/d/denomination.asp> (last visited Nov. 9, 2024).

more, and additional purchases can only be made in increments of US\$1,000.⁵⁷

WLB6 targets global investors. The bonds solely rely on global certificates to represent the sale, which means the bonds are in book-entry form only. To register the holding of the bonds, the Issuer procures a register of the Bond.⁵⁸ Bank, is the Registrar and the transfer agent that records the holding and transfer of the bonds to the Register.⁵⁹ A nominee of the common depository for the two designated clearinghouses represents each investor with respect to its registered holding of the Bonds.⁶⁰ Any entity with its name registered is the absolute owner for all purposes under WLB6's terms and conditions.⁶¹ A bondholder must file any transfer of ownership with the register.⁶²

2(a) Global Certificates. To further explain the process of holding the bonds, there are two types of Global Certificates – Regulation S Global Certificates and Restricted Global Certificates.⁶³ The choice on using which type of certificate depends on whether the investor resides in the U.S.

Restricted Global Certificates (RGC) only apply to bonds sold within the United States to Qualified Institutional Buyers (QIBs) and Qualified Purchasers (QPs). A QIB is a sophisticated institutional investor capable of understanding the risks associated with unregistered securities.⁶⁴ A QP is an individual who owns at least US\$5 million in

investments, or is a group of individuals who owns at least US\$25 million in investments. RGCs render the bonds not freely tradable to all the investors but QIBs and QPs, differentiating the bonds from registered securities.

Regulation S Global Certificates apply to all bonds sold outside the United States, or in another word, offshore. Regulation S is a U.S. Securities and Exchange Commission (SEC) rule.⁶⁵ It provides a safe harbor for issuers to conduct offshore transactions without having to register their transactions with the SEC while still being in compliance with U.S. security laws. In the meantime, however, offshore investors cannot resell the certificates back to the U.S. investor within 40 days, which is called the “distribution compliance period.”

Two designated clearinghouses served as intermediaries for WLB6's transactions.⁶⁶ A clearinghouse verifies, processes, and records the sale of a security, finalizing the transaction.⁶⁷ Therefore, even if WLB 6 has a Registrar, only the records maintained by these two clearinghouses can show the beneficial interest in the bondholder's global certificates and the transference of the global certificates.⁶⁸ Further, because a nominee in the clearinghouses represents each bondholder, the nominee receives payments under WLB6.⁶⁹ Thus, the bondholders can only

⁵⁷ See *supra* note 55.

⁵⁸ *Id.*

⁵⁹ See *supra* note 49, at 15.

⁶⁰ See *supra* note 55.

⁶¹ See *supra* note 49, at 94.

⁶² *Id.*

⁶³ See *supra* note 49, at 119.

⁶⁴ 17 C.F.R. § 230.144A (2024).

⁶⁵ 17 C.F.R. § 230.903 (2024).

⁶⁶ Euroclear, Investopedia,

<https://www.investopedia.com/terms/e/euroclear.asp> (last visited Nov. 9, 2024).

⁶⁷ Clearstream International: *What It Is, How It Works*, Investopedia,

<https://www.investopedia.com/terms/c/clearstream-international.asp> (last visited Nov. 9, 2024).

⁶⁸ See *supra* note 49, at 5 and 120.

⁶⁹ See *supra* note 49, at 119.

pursue the clearinghouses for their share of each bond coupon payment.⁷⁰

To safeguard the bondholders' interest, the Issuer will exchange the global certificates into "Certificates in Definitive Form for Individual Holdings of Bonds" only if either one of the clearinghouses has closed for business for a continuous 14 days and there is no alternative clearing system in place.⁷¹

The complex trading structure may not deter investors, because the Issuer only offers the bond on the primary (securities) market. So, WLB6 is designed for sophisticated qualified investors only.⁷² Retail investors cannot purchase the WLB6 bond.

3. *WLB6's accounts*

The Bonds were constituted by a trust deed⁷³. A separate private party served as the bonds trustee and the security trustee.⁷⁴

The issuer maintains five accounts for the operation of the WLB6.⁷⁵ First, the Funding Account is the initial operational account. After the closing of the WLB6, the Issuer must deposit all the bond proceeds, which are the funds raised from the issuance, into the Funding Account. For the first 120 days following the WLB6's closing, the Issuer should use the funds in the Funding account to make loans to Borrowers, pay the permitted hedging counterparties who mitigate foreign exchange rate risks, and pay the initial transaction costs, e.g., taxes, administrative costs, and guarantee fees. After the first 120 days,

the Issuer must transfer the funds from the Funding account to other accounts.⁷⁶

The Issuer must also transfer US\$750,000 to Debt Service Reserve Account to cover future coupon payments, transfer any surplus after the deduction of initial transaction cost to the Collection Account, and transfer any remaining balance into either the Recovery Account or the Collection Account, depending on whether the remaining balance is over US\$750,000. Although the Funding Account is a temporary account that exists for the first 120 days after the closing date of the WLB6, it serves an important function that holds and disburses the WLB6's initial proceeds.

Second, the Debt Service Reserve Account is a financial safety net that ensures the timely payment of debt obligations under WLB6. When the Collection Account does not have sufficient funds to pay either the bonds' expenses or the interest, the Issuer transfers the funds in this account into the Collection Account to cover the payment.⁷⁷ The sole purpose of this account is to ensure the financial stability of the WLB6.

Third, the Recovery Account is a special account that opens a sub-account when a special redemption event occurs, e.g., a loan to a regional borrower defaults.⁷⁸ The Recovery Account segregates the accelerated loan. The Issuer handles the amount in this account according to the Mandatory Special Redemption clause of WLB6.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *See supra* note 49, at 2.

⁷³ *See supra* note 55.

⁷⁴ *Id.*

⁷⁵ *See supra* note 49, at 95.

⁷⁶ *See supra* note 49, at 96.

⁷⁷ *Id.*

⁷⁸ *See supra* note 49, at 97.

Fourth, the Guarantee Fee Reserve Account is a special account that solely manages and pays fees due to the partial guarantor. This account ensures that the Issuer can pay the guarantee fee and that WLB6 is partially guaranteed.

Fifth, the Collection Account is the primary account into which the Issuer deposits the money after 120 days of WLB6's issuance. For example, if WLB6's regional borrowers pay the interest or repay their debts to the Issuer, the issuer must deposit the money into the Collection Account. The funds in this account are used to pay interest to Bondholders and other expenses. If the account and the Debt Service Reserve Account hold funds that have not been utilized, the Issuer may invest the funds in short-maturity-date, readily-withdrawable fixed deposits.

4. WLB6's risk mitigation structure

WLB 6 utilized a blended finance structure and provided cushions for investors. Blended finance is a strategy often deployed in social-impact-oriented investment. It leverages public or philanthropic capital to absorb potential losses or provide guarantees to incentivize private investors and mobilize private investment towards development outcomes.⁷⁹ Blended finance "blends" concessional and commercial capital to enhance financial returns and reduce financial and other risks for private investors.⁸⁰

⁷⁹ Center for Sustainable Finance & Private Wealth, Univ. of Zurich, *Blended Finance: When to Use Which Instrument?*, <https://www.csp.uzh.ch/en/research/All-Publications/Blended-Finance-When-to-use-which-instrument.html> (last visited Nov. 9, 2024).

⁸⁰ *Id.*

⁸¹ See *supra* note 49, at 14.

⁸² *Id.*

⁸³ See *supra* note 49.

In addition to WLB6's Debt Service Reserve Account, it has three layers of a blended finance structure. First, an independent fund serves as a subordinate investor.⁸¹ WCF provides US\$12,000,000 of subordinated indebtedness.⁸² This indebtedness is a first-loss capital for the WLB6, which will serve as a cushion to absorb the loss for the bondholders up to the amount.

Second, the Issuer's ability to maintain its operations and financial stability is partially guaranteed by the Swedish International Development Cooperation Agency ("Sida") of up to 40% of the net losses of principal.⁸³ This partial guarantee serves as a risk mitigation tool for the Issuer, offering protection against WLB6's potential defaults. Importantly, this partial guarantee does not reduce the overall risk for bondholders. The bondholders still bear the full risk regarding the bond's performance.

Third, WLB6 was secured by a pledge and first-ranking floating charge.⁸⁴ The pledge secures the Issuer's assets in case of a default.⁸⁵ A floating charge "is a security interest over a group of non-constant assets."⁸⁶ The value of the group of assets changes over time or "floats in value and quantity." If a default occurs, the floating charge crystallizes and becomes a fixed charge on the specified group of assets.⁸⁷

Here, the Issuer's bank accounts were the specified assets.⁸⁸ And the Deed of

⁸⁴ *Id.*

⁸⁵ *Pledged Asset*, Investopedia, <https://www.investopedia.com/terms/p/pledgedasset.asp> (last visited Nov. 9, 2024).

⁸⁶ *Floating Charge*, Investopedia, https://www.investopedia.com/terms/f/floating_charge.asp (last visited Nov. 9, 2024).

⁸⁷ *Id.*

⁸⁸ See *supra* note 83.

Pledge and Charge secured these assets.⁸⁹ The Security Trustee holds the security interest for the benefit of the bondholders and other parties.⁹⁰ Apart from this security interest, WLB6 “otherwise constitutes unsecured and insubordinate limited recourse obligations of the Issuer.”⁹¹ This provision ranks *pari passu* among the WLB6’s bondholders and with all other unsecured and insubordinate obligations of the Issuer.⁹² So, the bondholders have equal footing on WLB6’s repayment and are not prioritized over other bondholders and other ordinary creditors.⁹³

To further clarify, WLB6 has a priority of payments.⁹⁴ The bondholders’ interests are ranked higher than the entities whose funds are for the risk mitigation purposes. The priority differs on whether the Security Trustee has enforced WLB6’s security interest according to the pre-maturity special redemption clause.⁹⁵ In other words, whether WLB6 the Issuer has defaulted on the WLB6 or not.

The pre-enforcement payments occur when the following items are not paid in full. The Issuer may pay the following items with the funds in the Collection Account only if the payments or provisions with higher priority have been made in full and the withdrawal would not cause a negative balance in the Collection Account. The specific orders of priority are as follows:

- (1) Taxes imposed on the Issuer by any government agency;⁹⁶
- (2) The remuneration of costs and liabilities incurred by the Bonds Trustee and Security Trustee in performing their functions for the WLB6;⁹⁷
- (3) The remuneration of the costs and liabilities incurred by the parties, other than the Issuer, in administering the operation of the WLB6;⁹⁸ And the payments due to Permitted Hedging Counterparties, which protect WLB6 against currency exchange rate fluctuations;⁹⁹
- (4) The fee that Sida, the limited guarantor, owns under the terms of the Limited Guarantee;¹⁰⁰
- (5) The Issuer’s administrative costs and the cost to enforce any loan under WLB6;¹⁰¹
- (6) The payment of interest due to the Bondholders;¹⁰²
- (7) In the Issuer’s discretion, preserving US\$1,000,000 as a reserve amount on the WLB6’s maturity date to cover curable payment shortfalls;¹⁰³

⁸⁹ See *supra* note 49, at 101.

⁹⁰ See *supra* note 55.

⁹¹ See *supra* note 49.

⁹² *Id.*

⁹³ *Pari Passu*, Investopedia, <https://www.investopedia.com/terms/p/pari-passu.asp> (last visited Nov. 9, 2024).

⁹⁴ See *supra* note 49, at 98.

⁹⁵ See *supra* note 49, at 19.

⁹⁶ See *supra* note 94 .

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See *supra* note 49, at 129.

¹⁰⁰ See *supra* note 94.

¹⁰¹ See *supra* note 94.

¹⁰² See *supra* note 49, at 99.

¹⁰³ *Id.*

- (8) Principal and any other amounts due and payable to the Bondholders;¹⁰⁴
- (9) Interest, fee, and expenses payable to the Subordinated Debt holder, here the Women’s Catalyst Fund;¹⁰⁵
- (10) In the Issuer’s discretion, preserving a wind-down amount of US\$60,000 as a sub-account of the Collection Account on the WLB6’s maturity date;¹⁰⁶
- (11) the unpaid and outstanding principal of the Subordinated Debt;¹⁰⁷
- (12) Payment to defaulting hedging counterparty;¹⁰⁸
- (13) Issuer’s costs and expenses;¹⁰⁹
- (14) On the maturity date, 70% of the surplus will be paid to the IIX Portfolio Manager, and 30% of the surplus will be paid to the Subordinated Investor.¹¹⁰

After the WLB6’s Trust deed has been enforced in the event of WLB6’s default, all the money will be held in trust for the benefits of payees.¹¹¹ The post-enforcement orders of priority are more or less similar to the previous list. The money must first, pay the Security Trustee’s loss or liability, second, remunerate the Bonds Trustee and Security Trustee, third, pay the administrative costs owned by parties

¹⁰⁴ *Id.*
¹⁰⁵ *Id.*
¹⁰⁶ *Id.*
¹⁰⁷ *Id.*
¹⁰⁸ *Id.*
¹⁰⁹ *Id.*
¹¹⁰ See *supra* note 49, at 100.
¹¹¹ *Id.*
¹¹² See *supra* note 49, at 101.

other than the Issuer, fourth, pay the partial guarantor fifth, pay IIX, sixth, pay the Bondholders, seventh, pay subordinated debtors, eighth, pay defaulting hedging counterparty, and last, distribute any surplus to WCF and back to the Issuer, which ultimately goes back to IIX.¹¹²

5. *The Issuer on-lent the proceeds*

The Issuer uses the proceeds from the issuance of the Bonds to make loans to regional borrowers in the form of a non-convertible debenture.¹¹³ A debenture is a type of debt instrument that is unsecured by collateral.¹¹⁴ A non-convertible debenture means the debtor cannot convert the debt into the debtee’s equity.¹¹⁵

5(a) Regional Borrowers. The regional borrowers are “high-impact enterprises located in South Asia, Southeast Asia, and East Africa that use the proceeds of the Loans to benefit underserved women.”¹¹⁶ The regional borrowers are responsible for making loans to women-focused enterprises located in Kenya, Indonesia, Vietnam, Cambodia, and India.¹¹⁷ IIX monitors the regional borrowers’ performance against financial and social metrics, conducts annual field visits, and verifies the impact of gender equality.¹¹⁸

Using the loan agreement between the Issuer and a regional borrower as an example, it sets forth the terms as follows:

¹¹³ See *supra* note 49, at 121.
¹¹⁴ *Debenture*, Investopedia, <https://www.investopedia.com/terms/d/debenture.asp> (last visited Nov. 9, 2024).
¹¹⁵ *Id.*
¹¹⁶ See *supra* note 49.
¹¹⁷ See *supra* note 49, at 16.
¹¹⁸ See *supra* note 49, at 14.

- (1) The Issuer lends the loan in USD, and the Borrower pays the principal and interest in USD.
- (2) The interest has a net annual rate of 12%, which is higher than the 7.5% annual coupon rate of WLB6.

These terms above ensure the financial feasibility of WLB6. Also, because the transaction is hard currency only, this safeguards the WLB6 from risks associated with minor currency fluctuations.

- (3) The regional borrower must on-lend the loan money to the “majority women clients in the form of Small and Midsize Enterprise (SME) and microloans.” At least 70% of the loan money should benefit “finance underserved women from low-income, rural, or semi-urban, minority, or other forms of gender discriminating communities.” Additionally, the borrower agreed to a list of prohibited activities that its loan cannot support. All the activities on that list are not environmentally friendly or socially-positive, e.g., large-scale industrial plants, infrastructure construction projects, and any project that involves resettlement or forced labor. The borrower also cannot on-lent the loan to conflict zones or finance livestock farms.
- (4) The regional borrower must provide the Issuer with a monthly report setting forth a detailed client loan portfolio.

- (5) The regional borrower must report to the borrower if any investments are in areas prone to disasters.

These terms above ensure the money will be delivered to the women in need and reduce risk associated with geopolitics and environmental impact.

- (6) The regional borrower must submit audited financial statements for each fiscal year and quarterly unaudited financial statements to the Issuer for inspection. The Issuer will verify and certify the borrower’s usage of the loan money with the borrower’s internal auditor and independent directors.
- (7) The regional borrower must maintain a healthy portfolio. Loans that are at least 30 days overdue should account for less than 5% of the total outstanding loans. The portfolio should not maintain more than 3% of loans that are at least 90 days overdue. The borrower should not have non-collectible loans of more than 5% of the average outstanding principal loan in a 12-month period.
- (8) The regional borrower must ensure its capital adequacy. The borrower should maintain a Risk-weighted Capital Adequacy Ratio of at least 13.5% until December 30, 2024, and 14% thereafter. This ratio ensures the borrower will not have too many risky assets, for example, unsecured

consumer loans.¹¹⁹ The borrower must also maintain a 6:1 Debt to Equity Ratio. So, for every \$1 of its equity, the borrower can have up to \$6 of debt.

These terms above further safeguard WLB6 from financial risks. The continuous monitoring of the regional borrower's financial status shields the WLB6 from unexpected defaults and allows the Issuer to receive notices before a default issue becomes a serious problem.

(9) The regional borrower must cooperate with the Issuer in impact verification.

This term above ensures the Issuer and its portfolio manager, IIX, will have all necessary data and documents to assess the impact on gender equality. This aligns with the WLB6's specific requirement that IIX is responsible for the impact assessment, and that the WLB6 achieves the intended gender equality mission.

(10) The regional borrower must comply with all the local laws that govern a financial institution and that govern foreign exchanges. Also, the parties prepare an local language version of the loan agreement to comply with that nation's contract language law. Both the English language version and the local language version are equally authentic, but the English version will prevail in case of an inconsistency between versions.

¹¹⁹ *Capital Adequacy Ratio (CAR)*, Investopedia, <https://www.investopedia.com/terms/c/capitaladequacyratio.asp> (last visited Nov. 9, 2024).

This term above demonstrates the necessary compliance with the local law and regulations.

As stated above, the regional borrowers will be deemed in default if they do not follow the impact covenants. In the event of default, the loan on-lent to the regional borrower will be accelerated. The regional borrower must pay back the principal with a higher default interest rate. This means the end of the deal for the regional borrower. This legal consequence is grave.

6. *WLB6's redemption*

On WLB6's maturity date, "the Issuer will redeem the Bonds at their principal amount."¹²⁰ After the redemption, the Issuer will pay IIX and WCF any surplus funds in the Collection Account.¹²¹ Moreover, the Issuer will redeem a specific amount early if a loan is accelerated and the segregation of the accelerated loan into a sub-account of the Recovery Account is triggered.¹²²

A regional borrower's loan is accelerated when the regional borrower has defaulted and failed its obligation as a debtor. Using the sample loan agreement mentioned above as an example, the events of default occurs when the borrower (1) fails to pay any principal or interest within five business days, (2) ceases to exist, (3) fails to deliver documents, on-lent the loan improperly, change the nature of its business or engaged in unlawful businesses, (4) fails to maintain its financial status, (5) fails to correct of its non-compliance with any clause of the loan agreement within 30 days of the Issuer's written notice, (6) fails to ensure its support for positive

¹²⁰ See *supra* note 49, at 106.

¹²¹ *Id.*

¹²² *Id.*

social, worker rights, environmental, and economic effects, (7) fails to acquire Client Protection Principles Certifications, which is essential to ensure the loan would lead to tangible improvements in vulnerable population's lives, (8) misleads the Issuer at any time, (9) reduces the borrower's financial position or makes loans to any of its related entities, (10) be in a position that allows for bankruptcy, (11) fails to satisfy a judgment or decree, (12) enters into a situation that the Issuer feels insecure and remain in that situation for more than 30 days after the Issuer's written notice, or (13) otherwise the loan agreement becomes unlawful.

The Issuer must notify the Bonds Trustee and all Bondholders when a loan is accelerated.¹²³ After the loan's segregation, the Issuer must apply the funds in the Recovery Account, which the Issuer deposited from the Funding Account, to the relevant sub-account for that accelerated loan in order to pay the outstanding balance on the loan. If the funds in the Recovery Account are not sufficient to cover the amount owed, the Issuer will utilize funds in the Debt Service Reserve Account to redeem (i.e., pay off) the accelerated loan. If the funds in both accounts are insufficient, then a Principal and Interest Shortfall occurs. If any shortfalls remain after all recoveries and distributions have been made, they are considered losses to the bondholders.¹²⁴ This leads to the discussion below about what happens in the event that WLB6 defaults.

Even if the WLB series has not defaulted yet, the default clause has already structured the Bondholders' risk

¹²³ See *supra* note 49, at 107.

¹²⁴ See *supra* note 49, at 108.

¹²⁵ See *supra* note 49, at 112.

¹²⁶ See *supra* note 49, at 113.

assessment. An event of default occurs if (1) the Issuer fails to pay the principal or any interest for more than 30 days, (2) a court order or a board resolution is issued which requires the dissolution of the Issuer, (3) the Issuer otherwise becomes insolvent, or (4) WLB6's security interest in the pledge and first ranking floating charge has ceased.¹²⁵ If the Issuer defaults, all the outstanding principal and interest are accelerated and become immediately due and payable.¹²⁶ The Bonds Trustee and Security Trustee must act to protect the bondholders' interest, and enforce the Trust deeds that established WLB6 since the Bondholders do not have the right to take action.¹²⁷

WLB6 has a prescription clause in case any party claims for principal and interest. Any claims for the principal amount will expire if not made within ten years from the date on which the payment first becomes due.¹²⁸ The time period for interest is five years.¹²⁹ This clause is akin to the statute of limitation.

WLB6 is a use-of-proceeds Bond instrument

The use-of-proceeds approach means an issuer designates specific types of targeted projects at the issuance of the bonds.¹³⁰ WLB6 defines specific projects that the proceeds should be directed to, and has a sophisticated gender equality impact assessment framework.

1. specific projects

The Issuer defines its targeted on-lending regional borrowers and sets the allocation of funds to each one in WLB6's issuance. In selecting the regional

¹²⁷ See *supra* note 49, at 115.

¹²⁸ See *supra* note 125.

¹²⁹ *Id.*

¹³⁰ See *supra* note 21, at 2.

borrower, the Issuer picked the entity that has supported gender equality for at least three years and reported a net profit in the most recent fiscal year.¹³¹ As discussed above, the loan agreement between the regional borrower and the Issuer specifies that the loan money must be used to fund women entrepreneurs in the form of SMEs or microloans. WLB6's mission is to serve clients where at least 70% are underserved women, to ensure that women or girls as the majority of beneficiaries, to target industries where women are underrepresented, and to support organizations with over 30% women ownership or leadership representation in senior positions.¹³²

2. *Impact assessment*

IIX is responsible for monitoring the regional borrower and assessing the impact on gender equality.¹³³

The methodology of IIX's impact assessment is that, first, IIX identifies six specific outputs of WLB6. Thereafter, IIX measures the impact of these six outputs with gender-specific metrics.¹³⁴ The metrics are designed to specifically measure the impact on women, using gender-disaggregated data and input from women to focus on the empowerment factors that matter most to them.¹³⁵

To quantify the impact, IIX assigned a monetary proxy value to the social value of each outcome. There are two ways to monetize different types of social values. First, cost-based proxies measure social values that affect productivity. IIX calculates future cost savings or potential income increases, such as the economic benefit of time saved. Second, value-

based proxies measure social values that relate to financial resilience. IIX calculates the value of resources such as savings or insurance coverage available to women.¹³⁶

Monetized social value is indispensable in calculating the Social Return on Investment (SROI). The percentage that divides social value by the total amount of on-lent money is the SROI. WLB6's targeted SROI is 25%.¹³⁷

IIX defined six key outcomes, and each has its target number to achieve.

- (1) *Women Entrepreneurs*. Providing loans to around 230,000~250,000 women entrepreneurs who own small businesses or start-ups.
- (2) *Micro Savings and Insurance*. Providing savings and insurance products to women from low-income communities, enhancing their financial resilience.
- (3) *Affordable Housing*. Providing affordable housing loans to around 500~600 women in Cambodia, changing social norms and lifting income-related barriers to home ownership.
- (4) *Water and Sanitation (WASH)*. Providing loans to improve access to water and sanitation for around 27,000~29,000 women, partially easing women's burden to collect water.

¹³¹ See *supra* note 49, at 44.

¹³² *Id.*

¹³³ See *supra* note 49, at 14.

¹³⁴ See *supra* note 49, at 49.

¹³⁵ See *supra* note 49, at 55.

¹³⁶ *Id.*

¹³⁷ See *supra* note 49, at 56.

- (5) *Agriculture Loans for Smallholder Farmers*. Providing loans for around 67,000~69,000 women farmers in Kenya and India to boost financial resilience and encourage eco-friendly practices.
- (6) *Clean Energy Solutions*. Providing loans for Vietnamese companies who provide solar and other forms of clean energy to SMEs with a preference for supporting those that are women-owned and operated.

The outputs create five primary outcomes that directly benefit women. First, the loans boost women entrepreneurs' and women smallholder farmers' income by 10~30% annually. The total impact on income generation is estimated at approximately US\$277~278 million over four years. The improved income generation ability aligns with SDG1 (No Poverty) and SDG8 (Decent Work and Economic Growth).

Second, the insurance and saving products improved women's financial resilience with an estimated impact of US\$56~56.5 million, aligning with SDG10 (Reduced Inequalities).

Third, the housing loan increased women's asset ownership by a value worth approximately US\$24.2~24.5 million. Increased asset ownership aligns with SDG8 and SDG11 (Sustainable Cities and Communities) as well.

Fourth, the access to water and sanitation creates a value worth \$58~59 million, further supporting SDG 2 (Zero Hunger), SDG 6 (Clean Water and Sanitation), and SDG 8. The WASH loans help women to adapt to climate

challenges, and save women 1~3 hours daily on water collection.

Fifth, renewable energy loans improve women's access to affordable and clean energy and lower carbon emissions in emerging markets. The estimated impact is worth US\$4.45~4.55 million, advancing SDG 7 (Affordable and Clean Energy), SDG 9 (Industry, Innovation, and Infrastructure), and SDG 13 (Climate Action).

Besides the primary outcomes, three secondary outcomes that both directly and indirectly benefit women cannot be overlooked. First of all, the bond proceeds that are on-lent by the regional borrowers should be used to benefit the women's families and their offspring. Next, the improved standard of living also helps to secure women from gender-based violence both domestically and externally. Women can have gender-segregated or private spaces to manage sanitation needs. Lastly, the loan-supported sustainable farming practices enhance food security and climate resilience for the local community.

With all of these beneficial outcomes, women have more personal power in their local community, and thus play increasingly important roles in political decision-making.¹³⁸ All of these primary and secondary outcomes are considered in the context of the targeted nation's growth rate, policy, innovation or technological developments. Therefore, the outcomes provide a holistic understanding of the ability to create a sustainable impact and facilitate the empowerment of women in these underserved communities.¹³⁹

¹³⁸ *Id.*

¹³⁹ See *supra* note 49, at 57.

3. *WLB6's impact advances OBI*

WLB6 advances the three Orange Bond Principles™ that lead OBI. The first principle promotes gender-positive capital allocation. WLB6 ensures that this objective is met by including gender-specific impact covenants in the loan agreements with the regional borrowers. As shown above, WLB6 produces gender-specific outputs as a result.

The second principle promotes gender-lens decision-making and women's leadership. Not only does WLB6 produce positive outputs, but IIX also serves as a model. IIX is 50% women-owned, with women making up 40% of the investment committee and around 66% of the staff involved in the bond's core functions.

The third principle ensures transparency in investment process and reporting. In support of this principle, IIX provides semi-annual impact reporting that includes mandatory gender-lens outcomes for all nine regional borrowers. Correspondingly, the regional borrowers' loan agreements require them to report their portfolio and financial statements to IIX periodically, and provide support to IIX's impact assessment efforts. The impact assessment has positive externalities in that it increases the availability of gender-focused data, improves future portfolio decisions, and enhances transparency for investors in general.

WLB6 also furthers the OBI's goal to reform the current financial market. The Issuer, through IIX, cooperates with a diverse group of partners who have a common mission to build gender-equal, green capital markets. The partners include two banks, six law firms, and two

donor agencies, the Australian Department of Foreign Affairs and Trade, and the Swedish International Development Agency.

4. *Legal accountability to ensure the gender equality impact*

IIX formalizes its legal obligation to manage the Issuer and to assess the impact in the Portfolio Management Agreement with the Issuer.¹⁴⁰ However, the Portfolio Management Agreement displayed in the Information Memorandum does not describe any legal consequences if IIX does not perform its duty to assess the impact, or if the regional borrowers do not cooperate with IIX during the course of doing its impact assessment. This gap may easily be addressed by applying general corporate governance principles to the Portfolio Management Agreement in order to ensure full cooperation by regional borrowers, and full compliance in assessing social impact by IIX.

Further, IIX does not specifically warrant that its impact assessment is accurate or complete.¹⁴¹ WLB6 has no guarantee that the loans will deliver the intended social benefit or that they will not incur any adverse social impacts.¹⁴² Despite this being said, IIX has maintained its excellent reputation as a leader in the field of social impact investment in the Global South, and in the trustworthiness of the Orange Movement's™.

WLB6's Listing on the Singapore Securities Exchange

Listing WLB6 on the SGX can connect the Issuer to global investors. SGX has an electronic submission system and

¹⁴⁰ See *supra* note 49, at 125.

¹⁴¹ See *supra* note 49, at 24.

¹⁴² See *supra* note 49, at 30.

a market-friendly regulatory framework, making it a preferred platform.¹⁴³

A bonds issuer can list two types of debt securities on SGX, wholesale bonds and retail bonds. Since SGX maintains an electronic system, a bonds issuer may list wholesale bonds in token format, rendering them completely digital.¹⁴⁴

“Wholesale bonds are distributed only to institutional and accredited investors in larger denominations and traded over the counter,” meaning the bonds are only traded in a primary market.¹⁴⁵ Wholesale bonds investors must be sophisticated investors. In comparison, “Retail bonds are distributed to all investors, including mass retail investors, in smaller denominations and are traded on SGX similar to stocks.” So, retail bonds are traded in secondary market, they have higher liquidity and can attract more investors.

To list fixed-income bonds on SGX, SGX’s debt securities regulations require all the bonds to have a minimum principal amount of at least SGD150 million (Singapore dollar).¹⁴⁶ For foreign currency debt securities, SGX requires the satisfaction of any one of the three requirements.

- (1) SGX restricts the identity of an issuer to be either a supranational body, a

government, an entity that has listed its equity on SGX, a corporation with steady and substantial profit flows, or a corporation whose issuance is guaranteed by one of the above entities.¹⁴⁷

- (2) Or the to-be-listed debt securities have a credit rating of investment grade and above.¹⁴⁸
- (3) Or at least 80% of the bonds must have been subscribed by specified investors before the listing.¹⁴⁹

The above requirements do not differentiate a wholesale bonds issuer from a retail bonds issuer.¹⁵⁰ The only difference is that the issuer of retail bonds must publish a prospectus that includes detailed information about the issuer and the bonds.¹⁵¹ In comparison, wholesale bonds’ issuers are exempt from the requirement to file a prospectus. Wholesale bond issuers only need to announce their offering documents on SGXNET, the electronic company announcement system of SGX.¹⁵²

WLB6 is an illiquid investment instrument.¹⁵³ It is intended for investors who purchase and hold the bonds to maturity.¹⁵⁴ Accordingly, WLB6 is listed

¹⁴³ Singapore Exchange, Listing Debt Securities, <https://www.sgx.com/fixed-income/listing-debt-securities> (last visited Nov. 9, 2024).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Singapore Exchange, SGX Rulebook, § 320 (2016), <https://rulebook.sgx.com/rulebook/320> (last visited Oct. 12, 2024).

¹⁴⁷ Singapore Exchange, SGX Rulebook, § 304 (2016), <https://rulebook.sgx.com/rulebook/304> (last visited Oct. 12, 2024).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Singapore Exchange, SGX Rulebook, § 301 (2016), <https://rulebook.sgx.com/rulebook/301> (last visited Oct. 12, 2024).

¹⁵¹ Singapore Exchange, Prospectus, *Circulars & Offer Documents*, <https://www.sgx.com/securities/prospectus-circulars-offer-documents> (last visited Nov. 9, 2024).

¹⁵² Singapore Exchange, SGX Rulebook, § 320 (2016), <https://rulebook.sgx.com/rulebook/320> (last visited Oct. 12, 2024).

¹⁵³ See *supra* note 49, at 34.

¹⁵⁴ *Id.*

as a wholesale bond, not a retail bond.¹⁵⁵ Also, WLB6 is not listed as a Central Bank’s Collateral Pool for Discounting (CPD) eligible security, meaning it does not have high credit quality or liquidity.¹⁵⁶

Therefore, WLB6’s bondholders cannot further trade their bonds in the secondary market (i.e., stock markets) to acquire liquidity. Although the bondholders have the right to transfer the bonds¹⁵⁷, but they may only do so through a private transfer agreement to another qualified buyer. Further, the clearing houses must record the transfer, requiring the transferor and transferee to have an account with one or both of the clearing houses. This limits the transfer solely to sophisticated investors.¹⁵⁸ Although WLB6 is listed on the SGX, this alone does not make WLB a liquid asset that may be easily transferred or sold.

4(a) Endorsement of Bonds on the SGX. One of IIX’s primary considerations in listing WLB6 on the SGX was to obtain SGX’s endorsement as a “sustainable” security.

The benefit of the listing on SGX is with SGX’s Sustainable Fixed Income Initiative. In response to the growing

global demand for sustainable finance to support climate actions and social projects, SGX launched this sustainable initiative to develop a robust sustainable finance ecosystem.¹⁵⁹ SGX’s user-friendly online system is a good tool for investors to fast-track social impact-oriented bonds.¹⁶⁰ This initiative helps advertise WLB6 to global investors interested in the social impact investment space.¹⁶¹

SGX licenses the bonds issuers to use its endorsement mark, as if a trademark, to advertise their sustainable bonds.¹⁶² This involves an assigned International Securities Identification Number (ISIN) Code and filing an endorsement application with the SGX. (Note: The SGX also provides a search box that shows all the endorsed bonds.)

To qualify for SGX’s endorsement mark, the bonds must align with “recognized green, social or sustainability standards.” An external reviewer must review and confirm the alignment. The report that setting out the alignment must be publicly available.¹⁶³ The recognized standards include standards

¹⁵⁵ Singapore Exchange, *Wholesale Fixed Income Securities*, <https://www.sgx.com/fixed-income/wholesale-fixed-income-securities?currency=USD> (last visited Nov. 9, 2024).

¹⁵⁶ Singapore Exchange, *Corporate Announcement*, <https://links.sgx.com/1.0.0/corporate-announcements/ZH1BWUX1QW5WJ09J/Oa19f98281fcf7091636f17b26b2336a9c1ce709ad1440404073b1b5cdba5ff4> (last visited Nov. 9, 2024).

¹⁵⁷ See *supra* note 61.

¹⁵⁸ See *supra* note 49, at 120.

¹⁵⁹ *Brochure - Sustainable Fixed Income Initiative*, Singapore Exchange, at 2, <https://api2.sgx.com/sites/default/files/2022-11/Brochure%20-%20Sustainable%20Fixed%20Income%20initiative.pdf> (last visited Nov. 9, 2024).

¹⁶⁰ Singapore Exchange, *Sustainable Fixed Income*, <https://www.sgx.com/fixed-income/sustainable-fixed-income> (last visited Nov. 9, 2024).

¹⁶¹ *Id.*

¹⁶² *Terms of Use of Endorsement Mark - Sustainable Fixed Income Initiative*, Singapore Exchange, <https://api2.sgx.com/sites/default/files/2022-11/Terms%20of%20Use%20of%20Endorsement%20Mark%20-%20Sustainable%20Fixed%20Income%20initiative.pdf> (last visited Nov. 9, 2024).

¹⁶³ *Brochure - Sustainable Fixed Income Initiative*, Singapore Exchange, <https://api2.sgx.com/sites/default/files/2022-11/Brochure%20-%20Sustainable%20Fixed%20Income%20initiative.pdf> (last visited Nov. 9, 2024).

promulgated by International Capital Market Association (ICMA).¹⁶⁴

In order to comply with the external review requirement, IIX employed an independent evaluator to conduct an external review of WLB6.¹⁶⁵ The external review form is endorsed by ICMA as well. The review form is available to the public as required.¹⁶⁶ WLB6 has now been recognized as an SGX sustainable fixed-income security.¹⁶⁷

Conclusion

Despite progress through initiatives like gender bonds, Southeast Asia still faces significant challenges in achieving gender equality. More innovative financial instruments, such as Orange Bonds, are needed to effectively address these disparities and meet the UN's SDG 2030 goals. The Orange Bond framework, guided by the Orange Bond PrinciplesTM, aims to transform the financial system by promoting gender-positive capital allocation, inclusive leadership, and transparency, with the goal of mobilizing US\$10 billion to empower 100 million women, girls, and gender minorities by 2030.

The case study on WLB6 demonstrates the practical application of Orange Bonds, showcasing how a financial instrument can advance gender equality in emerging markets. WLB6 utilizes a blended finance structure to successfully mobilize capital to support women entrepreneurs across Southeast Asia and beyond. Moreover, with its sophisticated

risk mitigation structure, financial and other risks are avoided or reduced, thereby helping to protect the interests of private investors. With the legal structure and the impact assessment structure of WLB6 analyzed and explained, this toolkit provides practical guidance on how sustainable fixed-income debt securities can be leveraged to advance gender equality.

¹⁶⁴ *Id.*

¹⁶⁵ See *supra* note 49, appendix D.

¹⁶⁶ *Orange Bond External Review Form: NEF UK Refugee Impact Bond*, Impact Investment Exchange, [https://iixglobal.com/wp-content/uploads/2023/09/Orange-Bond-External-](https://iixglobal.com/wp-content/uploads/2023/09/Orange-Bond-External-Review-Form-NEF-UK-Refugee-Impact-Bond-IIX-270923.pdf)

[Review-Form-NEF-UK-Refugee-Impact-Bond-IIX-270923.pdf](https://iixglobal.com/wp-content/uploads/2023/09/Orange-Bond-External-Review-Form-NEF-UK-Refugee-Impact-Bond-IIX-270923.pdf) (last visited Nov. 9, 2024).

¹⁶⁷ Singapore Exchange, *Corporate Announcement*, <https://links.sgx.com/1.0.0/corporate-announcements/ZH1BWUX1QW5WJ09J/Oa19f98281fcf7091636f17b26b2336a9c1ce709ad1440404073b1b5cdba5ff4> (last visited Nov. 9, 2024).

Annex
Listing Alternative Debt Instruments
on Stock Exchanges:
The Next Generation of Microfinance Loans

Introduction

This discussion will focus on one of WLB6's regional borrowers in India.¹⁶⁸ As this private firm is an Indian Non-Banking Financial Company (NBFC), it will be referred to as such in this analysis. An NBFC offers various banking services but does not have a banking license.¹⁶⁹ This NBFC's mission is to "enable every Indian woman at the bottom of the economic pyramid to have access to financial capital and enable her to be an active catalyst in her "own" socioeconomic development."¹⁷⁰ Serving as a bridge between global investors and the unbanked population in India, microfinance retail loans to individuals and micro-enterprise borrowers are critical.¹⁷¹ One of the social impact audit tools - SPI4 audit, shows its expertise. It earned a well-rounded, above-average score from the SPI4 audit.¹⁷² The NBFC materially advanced gender equality and the general standard of living in India.¹⁷³ Its expertise and commitment to gender equality in India earned its on-lending contract with WLB6.¹⁷⁴ The NBFC received the bond proceeds from WLB6

through a loan agreement with the Issuer.¹⁷⁵

The NBFC uses the funding from WLB6 to provide retail loans to women in underserved areas. Each of its loan is about the size of US\$350.¹⁷⁶ According to the criteria used by the Issuer to select its regional borrowers,¹⁷⁷ and based on the sample public-facing loan agreement with a regional borrower¹⁷⁸, the NBFC must use the on-lending process to serve clients where at least 70% of them are underserved women.¹⁷⁹ In its 2024 general information posted on the Bombay Stock Exchange (BSE), The NBFC has INR2,935,253,337 Rupees worth of a retail loan portfolio, accounting for 83.7% of its entire loan portfolio.¹⁸⁰ It also has a diversified portfolio across Microfinance, Agri-finance and Impact Micro, Small and Medium Enterprises (MSME).¹⁸¹ The NBFC unequivocally qualifies as a Microfinance Institute (MFI).

For MFIs like this NBFC, the lack of funding sources is their main barrier to

¹⁶⁸ See *supra* note 49, at 62.

¹⁶⁹ Non-Banking Financial Company (NBFC), Investopedia, <https://www.investopedia.com/terms/n/nbfc.asp> (last visited Nov. 9, 2024).

¹⁷⁰ See *e.g.*, Ananya Finance for Inclusive Growth Private Limited, *Home Page*, <https://www.ananyafinance.com/> (last visited Nov. 9, 2024).

¹⁷¹ See *e.g.*, Ananya Finance for Inclusive Growth Private Limited, *How We Serve*, <https://www.ananyafinance.com/productsandservices> (last visited Nov. 9, 2024).

¹⁷² See *e.g.*, Ananya Finance for Inclusive Growth Private Limited, *What We Change*, <https://www.ananyafinance.com/impact> (last visited Nov. 9, 2024).

¹⁷³ See *e.g.*, Ananya Finance for Inclusive Growth Private Limited, *Our Experience*,

<https://www.ananyafinance.com/ourexpérience> (last visited Nov. 9, 2024).

¹⁷⁴ See *supra* note 168

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See *supra* note 49, at 44.

¹⁷⁸ See *supra*, at 11.

¹⁷⁹ *Id.*

¹⁸⁰ *Private Placement Memorandum*, Bombay Stock Exchange, <https://bond.bseindia.com/PPMFiles/2024/FEB/PPM/463/7691.pdf> (last visited Nov. 9, 2024).

¹⁸¹ See *e.g.*, Ananya Finance for Inclusive Growth Private Limited, *Key information of Private Placement of Non-Convertible Securities*, at 85, https://www.bseindia.com/corporates/download/12182/PPDIDisclosureDocuments_20240223170010.zip (last visited Nov. 9, 2024).

expanding their operation.¹⁸² Securitization allows MFIs to fund their portfolio without issuing new debt or equity, thus saving them from liabilities and minimizing the cost of capital.¹⁸³ Improving their liquidity position is MFIs' primary incentive for engaging in securitization.¹⁸⁴

There are two types of securitization - true sale securitization and synthetic securitization. In true sale securitization, the originator, e.g., an MFI, sells its to-be-securitized assets to a Special Purpose Vehicle. Thereafter, the SPV utilizes the assets' cash flow to issue an illiquid bond and then sell the bond to investors. The SPV returns the proceeds from the sale of the bond to the originator.¹⁸⁵

In synthetic securitization, the originator does not sell the assets. "Only the credit risk from the portfolio is transferred to the investors."¹⁸⁶ This type of securitization is commonly used for regulatory capital relief, where a regulator grants capital relief to a bank for it to remove its credit risk.¹⁸⁷ Synthetic securitization only applies to banks, not NBFCs.¹⁸⁸ This type of securitization does not provide funding to MFIs or improve MFIs' liquidity.¹⁸⁹

To facilitate a true sale securitization, an MFI must be qualified on two aspects -

the creditworthiness of its issuance and its assets' standardization.¹⁹⁰ The creditworthiness is measured by rating.¹⁹¹ The standardization of the to-be-securitized loan portfolios cannot be based on the loan policies as they are too diversified.¹⁹² Taking its retail loan policies as an example, it has two sets of policies with entirely different loan product features and credit criteria.¹⁹³ So, the standardization must focus on the cash flows generated from the microloan repayments. The cash flows serve as collateral for the microloan portfolio, curing the defect that microloans are too diversified in their loan policies.¹⁹⁴ To assess the cash flows, an MFI must sufficiently disclose the data of its portfolio, which is crucial for predicting cash flows. Some key statistics of the loan are the original loan amount, current outstanding loan balance, days to maturity, interest rate, collateral details, repayment history, loan seasoning, and repayment schedule.¹⁹⁵

The Annex reviews how this NBFC utilizes Alternative Debt Instruments ("ADI") to securitize its loan portfolio. First, this Annex discusses and explains different kinds of ADIs. Then, this Annex examines An NFBC's recent issuance of Non-Convertible Debentures (NCDs). This Annex explains how NCDs are the

¹⁸² Shahadat Hossain & Rubaiyet Khan, Securitization: An Alternative Funding Mechanism for the Microfinance Institutions, 3 J. Int'l Bus., Econ. & Entrepreneurship 1, 1 (2018), <https://doi.org/10.24191/jibe.v3i2.14427>.

¹⁸³ *Id.* at 2.

¹⁸⁴ *Id.* at 3.

¹⁸⁵ *Id.* at 2.

¹⁸⁶ *Id.*

¹⁸⁷ *Synthetic Securitization: Use of Derivative Technology for Credit Transfer*, Duke J. Comp. & Int'l L., at 17, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi>

[?article=1182&context=djci](https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/02/capital-relief-trades-part-123.pdf) (last visited Nov. 9, 2024).

¹⁸⁸ *Mayer Brown, Capital Relief Trades – Part 1, 2, 3*, at 2, <https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/02/capital-relief-trades-part-123.pdf> (last visited Nov. 9, 2024).

¹⁸⁹ *See supra* note 183.

¹⁹⁰ *See supra* note 182, at 8.

¹⁹¹ *See supra* note 182, at 9.

¹⁹² *Id.*

¹⁹³ *See supra* note 169, at 386 to 392.

¹⁹⁴ *See supra* note 191.

¹⁹⁵ *Id.*

optimal tool to securitize microfinance loans. Because this Annex examines this NBFC's NCD issuance in India as a case study, the discussion focuses on the Indian financial market and Indian regulations.

Types of Alternative Debt Instruments

Alternative debt instruments stand in contrast to traditional debt instruments, e.g., a simple loan that is either secured by collateral or not.¹⁹⁶ ADIs can generally be divided into two groups: instruments that are convertible to equity and those that are not convertible. The convertible ones are Convertible Bonds, Convertible Notes, SAFE/CARE Notes, and Convertible Debentures. The sole non-convertible one is the Non-Convertible Debenture.

Overview of Convertible Bond

A convertible bond is a debt instrument that is a hybrid security. On the one hand, it pays fixed-income interest payments. On the other hand, it can be converted into a predetermined number of the issuer's common stock shares. The conversion happens at a later date after the issuance of the convertible bond. Usually, the conversion takes place at the discretion of the bondholder.¹⁹⁷ Like a simple bond which states its coupon rate and maturity date, a convertible bond has two distinct terms – a conversion ratio and a conversion price. The conversion ratio determines how many shares a bond is worth. For example, a 4:1 ratio means that one bond will convert into four shares of equity. The

¹⁹⁶ KPMG, Alternatives for Commercial Debt Financing, <https://assets.kpmg.com/content/dam/kpmg/ca/pdf/2017/04/alternatives-for-commercial-debt-financing.pdf> (last visited Nov. 9, 2024).

convertible price determines the conversion ratio. It is the price per share at which a convertible bond can be converted into the issuer's common stock. For example, if the convertible bond's par value is US\$1000 and the conversion price is US\$100, the conversion ratio is $1000/100 = 10$, meaning one bond can be converted into ten shares of common stock. A bondholder is making a strategic decision to convert its bonds into shares if s/he values the future of the issuer's company more than cash.

Convertible bonds allow startups to raise funds without immediately diluting their shares in their companies, thereby diluting the founders' control over their companies. Convertible bonds also provide investors with the option to convert debt into equity, which acts as a form of collateral, securing their interest in the event of default. If the startup succeeds, investors can convert their bonds into shares and profit more from the appreciation of those shares.

Overview of Convertible Note

Similar to convertible bonds, early-stage startups often use convertible notes for their initial capital raise. A convertible note is a short-term debt instrument with terms like a maturity date and an interest rate. However, unlike typical debt, the note is usually converted into equity at a later date, and not repaid with cash. The conversion is based on a valuation of the startup before the maturity date, which determines how much equity the debt can be converted into. This process requires a valuation and cannot simply

¹⁹⁷ *Convertible Bond*, Investopedia, <https://www.investopedia.com/terms/c/convertible-bond.asp> (last visited Nov. 9, 2024).

involve repaying the debt with equity directly.¹⁹⁸ Valuation cap is a key term that sets the maximum valuation at which a convertible note can convert into equity. A lower valuation cap benefits investors if the actual value of the startup exceeds the cap because the investor acquires more shares at a capped lower rate. In addition, startups may motivate investors to purchase convertible notes with a discount rate. The discount offers a percentage reduction on the startups' future share prices, allowing the investors to own more shares.

To illustrate further, if the convertible notes are worth US\$1 million, with a 20% discount rate and a valuation cap of US\$5 million, the startup receiving the funding successfully works its way to an equity round. At the equity round, the startup's valuation reveals it is now worth US\$10 million, and the price per share is US\$10. Under the valuation cap, the convertible note investor converts the debt into shares at a price of US\$5 per share, earning 200,000 shares. If the convertible notes allow the investor to apply the discount rate on top of the valuation cap, the conversion price would be US\$4 per share, resulting in 250,000 shares. Therefore, if the startup is as successful as described, the investor may earn US\$2-2.5 million, or 200%-250% of their original investment. This profitability is higher than what a traditional debt instrument could ever provide.

The advantage that convertible notes have is that they are simpler and faster to issue and manage than convertible

bonds. Convertible notes allow startups to raise funds without needing to determine a company valuation upfront, which can be difficult in the early stages. Instead, the valuation is postponed to a later financing round when there is more concrete data, and the debt may then convert into equity based on the agreed future valuation.

Overview of SAFE/CARE Note

A SAFE note is the abbreviation for a Simple Agreement for Future Equity.¹⁹⁹ A SAFE is not a debt instrument while raising funds for startups. A SAFE note may be conceived as a convertible note without its debt terms, i.e., interest rate and maturity date. The investor's funding converts into the startup's equity at a later stage, triggered by specific events like a future funding round or initial public offering. To incentivize investors, the conversion usually would be at an even discounted rate, or the valuation cap would be even lower.

Similar to a convertible note, a SAFE note is simple and flexible. It delays the valuation until a later stage of the startup and does not dilute the startup's share. Because a SAFE note does not accrue interest, the interest is in the form of a further discounted equity exchange rate. If a startup presents a real potential for success, SAFE notes provide a lower capital entry threshold while offering a high return for its investors in the form of equity. However, SAFE notes leave investors with a higher risk. If the startup fails before the conversion event takes place, the investor receives nothing in return.²⁰⁰

¹⁹⁸ *What Is a Convertible Note?*, Fundera, <https://www.fundera.com/blog/what-is-a-convertible-note> (last visited Nov. 9, 2024).

¹⁹⁹ *Simple Agreement for Future Equity (SAFE)*, Investopedia,

<https://www.investopedia.com/simple-agreement-for-future-equity-8414773> (last visited Nov. 9, 2024).

²⁰⁰ *Simple Agreement for Future Equity (SAFE)*, Investopedia,

A CARE note is the abbreviation for a Convertible Agreement for Equity.²⁰¹ For a Singapore-incorporated private company, a SAFE note is called a CARE note. The Singapore Academy of Law and the Singapore Venture and Private Capital Association provide a model CARE template in order to reduce transactional costs and facilitate deals.²⁰²

Overview of Convertible Debenture

The previous three instruments are for short-term investments. A convertible debenture is a longer-term unsecured debt that can be converted into equity shares after a specified time. If a bond is secured by collateral, then it is not a debenture.²⁰³ While it pays fixed interest like a regular bond, the option to convert a debenture into stock gives investors a potential upside if the issuer's stock price rises. This hybrid financial product typically offers a lower interest rate because investors are compensated by the possibility of future equity conversion and the corresponding appreciation in equity.²⁰⁴

Overview of Non-Convertible Debenture

A non-convertible debenture is a long-term capital-raising debt instrument issued through a public issuance. NCD has a fixed maturity date and interest rate at the time of issuance. As the name

<https://www.investopedia.com/simple-agreement-for-future-equity-8414773> (last visited Nov. 9, 2024).

²⁰¹ Singapore Academy of Law, *Convertible Agreement for Equity (CARE)*,

<https://www.sal.org.sg/Resources-Tools/VIMA-Premium-Access/Why-CARE> (last visited Nov. 9, 2024).

²⁰² Singapore Venture Capital & Private Equity Association, *Model Legal Documents*, <https://www.svca.org.sg/model-legal-documents> (last visited Nov. 9, 2024).

²⁰³ *What Is the Difference Between Non-Convertible Debentures and Fixed Deposits?*, Investopedia, <https://www.investopedia.com/ask/answers/09/non-convertible-debentures-fixed-deposits-difference.asp>

suggests, NCDs cannot be converted into the issuer's equity, protecting the share of the issuer from dilution of the worth of his/her shares.²⁰⁵ This feature allows companies to secure funds without giving up decision-making power or equity ownership. On the investors' side, NCDs shield investors from the volatility associated with the companies' equity, making investors less susceptible to stock price fluctuations.

Although NCDs are close to a simple debt or a fixed deposit with the target company, they have key differences. The differences are derived from the NCDs' public issuance requirement. For example, the issuer must assign a trustee to manage the interest of the investors. The issuer's credit must be rated.²⁰⁶ NCDs' compliance with the security regulations in its target listing platform, which prompts transparency in dealing, reduces the potential risks for the investors.

NCDs work for MFIs

Convertible ADIs are unsuitable for MFIs who do not have "free equity" (i.e., the total amount of equity in an account, less commission fees and other charges) that may be available for acquisition or sale, or which do not have a clear prospect of growth. MFIs, especially those that

[-convertible-debentures-fixed-deposits-difference.asp](https://www.investopedia.com/terms/c/convertible-debenture.asp) (last visited Nov. 9, 2024).

²⁰⁴ *Convertible Debenture*, Investopedia, <https://www.investopedia.com/terms/c/convertible-debenture.asp> (last visited Nov. 9, 2024).

²⁰⁵ *Non-Convertible Debentures (NCD): Meaning, Taxation, Interest Rate, Example*, ClearTax, <https://cleartax.in/s/non-convertible-debentures-ncd> (last visited Nov. 9, 2024).

²⁰⁶ *What Is the Difference Between Non-Convertible Debentures and Fixed Deposits?*, Investopedia, <https://www.investopedia.com/ask/answers/09/non-convertible-debentures-fixed-deposits-difference.asp> (last visited Nov. 9, 2024).

operate for a couple of years, may not have free equity for investors to convert their debt into. For example, the NBFC under discussion started its operation in 2009.²⁰⁷ To date, all of its equity has been allocated.²⁰⁸

NCDs offer a pure debt structure with clear repayment terms, which generally are the terms that investors would prefer. According to a study conducted by KPMG Assurance and Consulting Services LLP (KPMG), in 2023, 63% of Indian NBFCs' funding comes from borrowing, and one-third of the borrowing is in the form of NCDs.²⁰⁹ The total size of borrowing in the form of NCDs is INR11.45 trillion. In 2023, NCBFs issued more than 80% of total public-issued debentures and around 40% of total privately placed debentures.²¹⁰ The Indian financial market's clear practice is to select NCDs.

Case study on Securitization with Non-convertible Debentures Using the NBFC's Listing on the Bombay Stock Exchange

This case study will explain how a microfinance institute utilizes NCD to raise funds while improving its liquidity. This Annex examines the listing of the of the NCD on the Bombay Stock Exchange (BSE) by the NBFC under discussion. BSE publicized its listing document on its website as the Memorandum of Private Placement Bonds.²¹¹ Searching for the specific name of the NBFC on the

²⁰⁷ Ananya Finance for Inclusive Growth Private Limited, *About Us*, <https://www.ananyafinance.com/about> (last visited Nov. 9, 2024).

²⁰⁸ General information, page 16
²⁰⁹

<https://assets.kpmg.com/content/dam/kpmg/in/pdf/2024/02/nbfc-in-india-growth-and-stability.pdf>, page 20

aforementioned BSE library will provide access to its listing documents package. In order to list its NCD on the BSE, the NBFC provided the consent letter from the debenture trustee to show the NCDs are held in trust, a rating letter to show its creditworthiness as required by the Securities and Exchange Board of India (SEBI), and one general information document and a key information document to satisfy the mandatory disclosure under Issue and Listing of Non-Convertible Securities Regulations promulgated by SEBI and under the Indian Company Act. The General Information (GI) and Key Information (KI) documents are placement memorandum. The General Information introduces the NBFC's financial background.²¹² Key Information introduces the structure, terms, and conditions of the NCDs.²¹³

Disclosed the NBFC's financial background

Generally speaking, private investors' primary concern is whether the NBFC will likely go bankrupt after the issuance of the NCDs. To address the concern, the NBFC's GI disclosed the specific risks related to it and explained its financial statements.

The NBFC's risk factors are associated with its support for microfinance borrowers and small business owners. The majority of the loans in its portfolio are unsecured, and its clients are in the

²¹⁰ <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2024/02/nbfc-in-india-growth-and-stability.pdf>, page 21

²¹¹ https://www.bseindia.com/markets/debt/memorandum_data.aspx

²¹² See *supra* note 169, at 4.

²¹³ Key information, page 3.

high-risk category.²¹⁴ The NBFC's individual clients lack proper income verification, resulting in difficulties in assessing their creditworthiness.

As of March 31, 2023, the NBFC's Gross Non-Performing Assets (NPA) is INR69.7 million, among its total loan portfolio of INR3.54 billion. This means it cannot collect 1.97% of its total loan portfolio. Although the NBFC employed measures like physical meetings and credit underwriting, it cannot fully guarantee control over the level of NPAs. If its loan loss reserves become inadequate to cover the NPA, its financial condition and operational results may suffer significantly.²¹⁵

The NBFC's small business clients are mostly in rural and semi-urban areas. If these businesses face economic downturns, borrowers may struggle to repay loans, leading to an increase in NPAs. To reduce the risk factors associated with small business borrowers, the NBFC has established a clear separation between its sales and credit risk departments to improve the quality of its loan decisions. The sales team focuses on contacting potential borrowers, while the credit risk department is responsible for evaluating the borrower's ability to repay the loan. This structure ensures that credit decisions are made based on objective risk assessments, while not being influenced by sales targets.²¹⁶ Further, as the NBFC's clients are mostly in rural and semi-urban areas, its branches operating in those areas are exposed to operational risks like fraud and theft due to the high volume of small amount cash transactions. To mitigate these risks, it is

exploring cashless transactions. Currently, it transfers disbursements directly to clients' bank accounts and employs internal audit processes and data analytics to monitor operations.²¹⁷

the NBFC's risk factors are also associated with the nature of microfinance loans. Almost all of its loans are small, short-term loans, with a majority of its loans due within two years. If the loans are due but as the NBFC in question does not issue new loans, then its interest income will decline. Acknowledging this issue, the NBFC is expanding its loan distribution network.²¹⁸

The other risk factors are general factors like political risks, macroeconomic risks, regulatory and concentration risks, potential strikes, and potential insurance deficiency.²¹⁹

The NBFC's financial statements from 2020 to September 30, 2023, listed basic information, such as its shareholders, corporate structure, branches, and locations. The explanation also reads its key operational and financial parameters within the time period.²²⁰ The data shows that:

- (1) The NBFC total assets have decreased from INR 5.32 billion in FY 2022-23 to INR 4.78 billion as of September 30, 2023. This significant drop indicates that it may have challenges in maintaining its asset base. However, its net worth remained stable, rising slightly from INR 977.7 million in FY 2022-23 to INR 985.1 million as of September

²¹⁴ See *supra* note 169, at 9.

²¹⁵ *Id.*

²¹⁶ See *supra* note 169, at 10.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ See *supra* note 169, at 10–12.

²²⁰ See *supra* note 169, at 20–21.

2023. This shows its resilience despite other financial pressures.²²¹

- (2) The NBFC's revenue from operations has declined from INR 687.6 million in FY 2022-23 to INR 445.7 million as of September 30, 2023. This notable reduction suggests that it may be faced with shrinking demand in the loan market or other operational inefficiencies. Specifically, its interest income has sharply declined from INR 657.5 million in FY 2022-23 to INR 420.7 million as of September 2023.²²²
- (3) The NBFC also experienced a significant decline in cash and cash equivalents, dropping from INR 1.25 billion in FY 2022-23 to INR 601.7 million as of September 2023. The net cash flow from operating activities is a negative outflow at INR 78.3 million as of September 2023. This sharp drop in liquidity, coupled with negative operating cash flow, compelled it to appraise funding for its sustainability.²²³
- (4) Despite the declines above, it managed to maintain a low-level profit. Its profit after tax dropped to INR 4.7 million as of September 2023, down from INR 25.4 million in FY 2022-23.²²⁴

- (5) Also, its loan portfolio had a marginal increase, rising from INR 3.66 billion in FY 2022-23 to INR 3.68 billion as of September 2023. This indicates stability in the core lending business.²²⁵
- (6) Although its loans extended to its clients are mostly unsecured, The NBFC's borrowings are largely secured. In 2021 and 2022, all of its borrowing were secured. In 2023, the number went down from 100% to around 90%. As of December 2023, INR 37.07 billion worth of borrowings are secured, and INR 3.7 billion worth of borrowing is unsecured.²²⁶

Besides the disclosure above, the GI also listed previous SEBI penalties that the NBFC received.²²⁷ The disclosure is comprehensive.

Overview of the NCDs' structure and terms

The NBFC issued 6672 NCDs with a face value of INR 100,000 each by way of private placement.²²⁸ The coupon rate was 13.25% annually.²²⁹ These NCDs were issued in the Wholesale Debt Market of the BSE.²³⁰ The qualified investors were Qualified Institutional Buyers and any other entities specifically authorized by it to make purchases.²³¹ The Issuer of WLB6 is one of the investors.²³²

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *See supra* note 169, at 54.

²²⁸ *See supra* note 181, at 29.

²²⁹ *See supra* note 181, at 63.

²³⁰ *See supra* note 181, at 19.

²³¹ *See supra* note 181, at 62.

²³² *See supra* note 181, at 64.

These NCDs were issued with a Debenture Trustee (Trustee).²³³ The Trustee is responsible for executing and delivering all the NCD's documents, assigning a nominee director to the NBFC, holding the money in trust, and pursuing it in the event of default for the benefit of the investor.²³⁴ After the Trustee has done its due diligence, it must issue a certificate to confirm that the NBFC performed all its duties prior to the NCDs' issuance.²³⁵

The issuance of these NCDs is in conjunction with WLB6. The aggregated amount of these NCDs is INR667.2 million, approximately equal to the USD amount that the NBFC borrowed from the Issuer of WLB6, which amounted to US\$8,000,000.²³⁶ The use of proceeds of these NCDs is similar to WLB6's restriction on the use of proceeds.²³⁷ At least 70% of the proceeds should be used to finance underserved women for income-generating purposes, and 35% of them should be allocated to smallholder farmers for agricultural income generation, excluding livestock and dairy farming.²³⁸ Also, the proceeds cannot be used for capital market activities, speculative purposes, or real estate investments.²³⁹

Security of the NCDs

The NBFC's loan portfolio secured the NCDs.²⁴⁰ Even though microfinance loans tend to be unqualified for bundling and subsequent securitization, the high-quality loans in its portfolio are accepted and can be bundled as assets to back a

securitization. The assets that are pledged as collateral for NCDs are called hypothecated assets.²⁴¹

Here, the hypothecated assets are the NBFC's loans, whose borrowers have not missed any payments that have been overdue for more than 90 days.²⁴² It has a continuing duty to replace any loans that fail this standard with other qualified loans. Also, the total percentage of loans that have overdue payments pending, but not exceeding 90 days, should not account for more than 10% of the total value of the hypothecated assets.²⁴³ More specific eligibility criteria for using u loans as hypothecated assets are that (1) the loans must be active at the time of selection; (2) the loans must not have any restructuring or rescheduling, meaning the loans had not undergone any financial difficulties; (3) the loans must comply with "Know Your Customer" norms, meaning the NBFC must properly identify the borrower, verify the borrower's credit and ability to repay, and meet other regulations that prevent money laundering or fraud; and (4) the loans must be created by it or its subsidiaries; they cannot be the creditor's rights that it purchased from a third party.²⁴⁴

The volume of the hypothecated assets that the NBFC had to retain is 110% of the aggregate initial principal amount of the Debentures, which is INR733,920,000.²⁴⁵ With the selected high-quality loans, it successfully

²³³ See *supra* note 181, at 20.

²³⁴ See *supra* note 181, at 159–160.

²³⁵ See *supra* note 181, at 110.

²³⁶ See *supra* note 49, at 48.

²³⁷ *Id.*

²³⁸ See *supra* note 181, at 62–63.

²³⁹ *Id.*

²⁴⁰ See *supra* note 181, at 64.

²⁴¹ *Hypothecation*, Investopedia,

<https://www.investopedia.com/terms/h/hypothecation.asp> (last visited Nov. 9, 2024).

²⁴² See *supra* note 181, at 65.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

standardized part of its loan portfolio, enabling the issuance of NCDs.

Besides the security of the NCDs, the NBFC had the obligation to maintain its financial well-being, specifically on five parameters, as explained below

(1) Portfolio at Risk (PAR)²⁴⁶

No more than 4% of the company's loan portfolio can have payments overdue by more than 30 days. No more than 3.5% of the loan portfolio should have payments overdue by more than 90 days. The ratio of restructured loans with overdue payments exceeding 90 days should not exceed 5% of the loan portfolio. The percentage of the loan portfolio that has been written off, i.e., deemed uncollectible, must be less than 2%.

(2) Loan Loss Reserve Ratio²⁴⁷

The company must have reserves equal to at least 100% of loans that are overdue for more than 90 days. For other types of loans, the company must maintain a reserve of at least 60% for loans overdue by more than 90 days.

(3) Capital Adequacy Ratio (CAR)²⁴⁸

The NBFC's ratio of its capital to its risk-weighted assets must be at least 20% or 5% higher than the regulatory minimum. Its ratio of debt to equity does not exceed 4.5.

(4) Un-hedged Open Foreign Currency Ratio²⁴⁹

The NBFC's ratio of foreign currency liabilities that have not been covered

against exchange rate fluctuations cannot exceed 25% of its core capital, e.g., common shares, retained earnings, etc.

(5) Profitability²⁵⁰

The NBFC's operating expenses cannot account for more than 80% of its income. It must be self-sufficient and can sustain its operations without relying on external funding.

Rating of the NCDs

Acuité Ratings & Research Limited (Acuite) is an Indian credit rating agency registered with SEBI and accredited by the RBI as an External Credit Assessment Institution (ECAI), providing credit ratings, research, and risk analysis for financial instruments such as bonds and loans. Acuite relies on its acknowledged rating criteria to rate the NCDs.²⁵¹ Acuite rated the NBFC's NCDs as BBB stable.²⁵² The NBFC needs to keep the rating from downgrading to BB, or the NCDs will default.²⁵³ The rating depended on its operational expertise and its financial situation.²⁵⁴

The NBFC's strengths were that (i) it was managed by experienced leadership, (ii) it had a healthy Capital Adequacy Ratio of 27.75%, and (iii) the assets under its management had grown by 12.36% in FY 2022-23.²⁵⁵

The NBFC's weaknesses were (i) its low profitability, specifically its Return on Average Assets (ROAA) is merely 0.53% and its Net Interest Margins (NIM) is a modest 6.53%, (ii) its moderate asset

²⁴⁶ See *supra* note 181, at 70.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ Acuité Ratings & Research Limited, Rating Criteria, <https://www.acuite.in/rating-criteria.htm> (last visited Nov. 9, 2024).

²⁵² See *supra* note 181, at 19.

²⁵³ See *supra* note 181, at 139.

²⁵⁴ See *supra* note 181, at 84–86.

²⁵⁵ See *supra* note 181, at 85.

quality, (iii) its recent shift in business model, which is from wholesale microfinance lending in 2020 to retail lending.²⁵⁶

In addition, the NBFC's overall liquidity was adequate. Regarding the Environmental, Social, and Governance (ESG) factors, it maintained a good business ethic, board diversity, and sufficient independent directors. It upheld its commitment to serve underserved women. Further, it maintained a low exposure to environmental risks and invested in environmentally friendly projects. Overall, the outlook on its operation would remain stable for the medium term.²⁵⁷

Conclusion

Non-Convertible Debentures (NCDs) offer a clear advantage for companies, especially Microfinance Institutions (MFIs), by providing long-term capital without diluting ownership through equity conversion. NCDs allow issuers to raise funds with fixed repayment terms, which is appealing to investors seeking stable returns. For MFIs, NCDs are a practical financing tool that aligns with their operational needs.

The NBFC's success demonstrates that, even though securing a rating and issuing NCDs can be challenging, it is achievable with the right approach. The key takeaway is that MFIs need to maintain strong governance, sound financial practices, and transparent reporting.

Adhering to important financial metrics, such as capital adequacy ratios, loan loss reserves, and portfolio quality, is critical. Meanwhile, MFIs must keep their eye on local platforms' regulations and specific

disclosure formalities. This Annex's explanation of the NBFC's NCDs issuance provides a successful example and hopefully inspires financial market practitioners to explore their options.

²⁵⁶ See *supra* note 181, at 86.

²⁵⁷ *Id.*