



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CONSULTATION PAPER

Consultation paper on clarification on the term “pecuniary relationship” of Debenture Trustee (DT) with the issuer as per Regulation 13A of the DT Regulations

August 2024

1. Objective and Background:

- 1.1. The objective of this consultation paper is to seek comments/ views/ suggestions from the public on the suggestions of the Working group for Ease of Doing Business (EoDB) for DTs.
- 1.2. The Hon'ble Finance Minister in the budget announcements for FY 2023-24, *inter-alia*, made an announcement to simplify, ease and reduce cost of compliance for participants in the financial sector through a consultative approach.
- 1.3. In order to align the process of review with the budget announcement, SEBI constituted various Working Groups to recommend measures to simplify and ease compliances under various SEBI Regulations.
- 1.4. Accordingly, a working group for review of compliance requirements under SEBI (Debenture Trustees) Regulations, 1993 (hereinafter '*DT Regulations*') recommended certain measures to promote ease of doing business.
- 1.5. Further, in order to promote the ease of doing business and reduce the compliance burden, SEBI vide Press Release dated October 04, 2023 had also sought comments from the public on various Regulations by November 06, 2023. The comments received from the public regarding DT Regulations were forwarded to the working group for consideration in its final recommendation.
- 1.6. Based on the recommendations of working group on ease of doing business and subsequent deliberations with Corporate Bonds and Securitization Advisory Committee (hereinafter "*CoBoSAC*"), public comments are invited in respect of the following proposal:

- (a) Clarification on the term “pecuniary relationship” of DT with the issuer, as per Regulation 13A of DT Regulations, for eligibility as appointment as DT.

1.7. The detailed proposal is mentioned in Paragraph 2 of this consultation paper.

2. Clarification on the term “pecuniary relationship” of DTs with the issuers, as per Regulation 13A of DT Regulations, for eligibility as appointment as DT

2.1. Background:

Currently, there exists a restriction of appointment of an entity as a DT who has any pecuniary relationship with the issuer amounting to 2% or more of its gross turnover or total income or ₹50 lakh (or such higher amount as may be prescribed), whichever is lower, during the two immediately preceding financial years or during the current financial year.

2.2. Extant regulatory provision:

2.2.1. Regulation 13A of DT Regulations, inter-alia, reads as under:

“13A. A person shall not be appointed as a debenture trustee, in case-

(a) the debenture trustee, -

.....

(iv) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

.....

(vii) has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or ₹50 lakh or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

.....”

2.2.2. Rule 18(2)(c) of Companies (Share Capital and Debentures) Rules, 2014 ('SCD Rules') inter-alia reads as under:

"(c) A person shall not be appointed as a debenture trustee, if he—

.....

(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

.....

(vi) has any pecuniary relationship with the company amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

....."

2.3. Submissions of the working group:

Concern: DTs amongst the working group members raised a concern on whether the remuneration being drawn by DTs from the issuer is included or excluded from the purview of 'pecuniary relationship' as per clause 13A(a)(vii), at the time of ascertaining eligibility.

Discussion: Referring to sub-rule (2)(c)(iii) of Rule 18 of SCD Rules, the WG discussed that the present language of the provisions is amply clear that the remuneration payable to DTs should not be considered while assessing the pecuniary relationship of the DT with the issuer.

Recommendation: In order to maintain congruence between the provisions of Companies Act and DT Regulations, the WG recommended that SEBI may provide clarification that the remuneration payable to DTs should not be considered while assessing the pecuniary relationship of the DT with the issuer, as per Regulation 13A(a)(vii).

2.4. Recommendations of CoBoSAC:

The Committee members deliberated and were in agreement with the proposal.

2.5. Proposal:

Considering the recommendations of working group, deliberations held in CoBoSAC meeting and taking cue from sub-rule 2(c)(iii) of Rule 18 of SCD Rules and Regulation 13A(a)(iv) of DT Regulations, that excludes remuneration payable to DTs, the same can be applied to Regulation 13A(a)(vii) as well. Accordingly, it is proposed to clarify, by way of circular, that the pecuniary relationship excludes remuneration payable to DTs.

Further, based on the discussions held with the Working Group and CoBoSAC, it is proposed that, henceforth, the issuer shall disclose in the offer document the remuneration/ revenue received by the DT from the issuer in respect of debenture trusteeship services as a percentage of the total remuneration/ revenue received by DT from the said issuer in respect of all services (including services other than the debenture trusteeship services), over the last three financial years.

Illustration:

If the remuneration/ revenue received by the DT in respect of debenture trusteeship services from the issuer is INR 3 lakh (for last three financial years), while the revenue received by the DT in respect of services other than debenture trusteeship services from the said issuer is INR 12 Lakh (for last three financial years), the percentage of remuneration/ revenue received by the DT in respect of debenture trusteeship services from the said issuer shall be calculated as below:

- Revenue received by the DT in respect of debenture trusteeship services – 3 Lakh
- Revenue received by the DT in respect of services other than debenture trusteeship services from the said issuer – 12 Lakh
- Total revenue received by the DT in respect of all services from the said issuer – 15 Lakh

Hence, percentage to be disclosed in the Offer Document - 20 per cent (i.e. 3 Lakh/ 15 Lakh).

Consultation 1: Clarification on the term “pecuniary relationship” of DTs with the issuers, as per Regulation 13A of DT Regulations, for eligibility as appointment as DT

Kindly provide your comments on the following along with supporting rationale:

- 1) Whether the proposal to exclude pecuniary relationship from computation of remuneration payable to DTs is appropriate and adequate?
- 2) Whether the proposal of disclosure of remuneration/ revenue received in respect of debenture trusteeship services as a percentage of the total remuneration/ revenue received by DT from the said issuer in respect of all services (including services other than the debenture trusteeship services), is appropriate and adequate?

3. Public Comments

3.1. Considering the implications of the aforementioned matters on the market participants, public comments are invited on the above-detailed proposals and the Draft Circular in this regard (**Annexure A**). The comments/ suggestions should be submitted latest by **September 11, 2024**, through the online web-based form which can be accessed using the following link:

<https://www.sebi.gov.in/sebiweb/publiccommentv2/PublicCommentAction.do?doPublicComments=yes>

3.2. The instructions to submit comments on the consultation paper are as under:

1. *Before initiating the process, please read the instructions given on top left of the web form as “Instructions”.*

2. Select the consultation paper you want to comment upon from the dropdown under the tab – “Consultation Paper” after entering the requisite information in the form.
3. All fields in the form are mandatory;
4. Email Id and phone number cannot be used more than once for providing comments on a particular consultation paper.
5. If you represent any organization other than the types mentioned under dropdown in “Organization Type”, please select “Others” and mention the type, which suits you best. Similarly, if you do not represent any organization, you may select “Others” and mention “Not Applicable” in the text box.
6. There will be a dropdown of Proposals in the form. Please select the proposals one- by-one and for each of the proposal, please record your level of agreement with the selected proposal. Please note that submission of agreement level is mandatory.
7. If you want to provide your comments for the selected proposal, please select “Yes” from the dropdown under “**Do you want to comment on the proposal**” and use the text boxes provided for the same.
8. After recording your response to the proposal, click on “Submit” button. System will save your response to the selected proposal and prompt you to record your response for the next proposal. Please follow this procedure for all the proposals given in the dropdown.
9. If you do not want to react on any proposal, please select that proposal from the dropdown and click on “**Skip this proposal**” and move to the next proposal.
10. After recording your response to all the proposals, you may see your draft response to all of proposals by clicking on “**Check your response before submitting**” just before submitting response to the last proposal in the dropdown. A pdf copy of the

response can also be downloaded from the link given in right bottom of the web page.

11. The final comments shall be submitted only after recording your response on all of the proposals in the consultation paper

3.3. In case of any technical issue in submitting your comment through web based public comments form, you may contact the following through email with a subject: "Issue in submitting comments on Consultation Paper on clarification on the term 'pecuniary relationship' of DT with the issuer as per Regulation 13A of DT Regulations".

- a) Sarika Kataria, DGM (sarikak@sebi.gov.in)
- b) Nishtha Tewari, AGM (nishthat@sebi.gov.in)
- c) Nikhil Chaudhary, Manager (nikhilc@sebi.gov.in)

Issued on: August 21, 2024

ANNEXURE - A

DRAFT CIRCULAR

SEBI/HO/DDHS/DDHS-PoD-3/P/CIR/2024/____

August ____, 2024

To,

Issuers who have listed and/ or propose to list Non-Convertible Securities,
Securitised Debt Instruments, Security Receipts, Municipal Debt Securities or
Commercial Paper

All Registered Debenture Trustees (DTs)

Madam/Sir,

Sub: Clarification on the term “pecuniary relationship” of Debenture Trustee (DT) with the issuer as per Regulation 13A of SEBI (Debenture Trustees) Regulations, 1993

1. Regulation 13A of SEBI (Debenture Trustees) Regulations, 1993 (“DT Regulations”), inter-alia, reads as under:

“13A. A person shall not be appointed as a debenture trustee, in case-

(a) the debenture trustee, -

.....

(iv) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

.....

(vii) has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or ₹50 lakh or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

.....”

2. Rule 18(2)(c) of Companies (Share Capital and Debentures) Rules, 2014 ('SCD Rules'), inter-alia, reads as under:

“(c) A person shall not be appointed as a debenture trustee, if he—

.....

(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

.....

(vi) has any pecuniary relationship with the company amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

.....”

3. One of the recommendations of the Working Group of DTs for Ease of Doing Business (EoDB) is to provide clarification that the remuneration payable to DTs should not be considered while assessing the “pecuniary relationship” of the DT with the issuer as per Regulation 13A(a)(vii), in order to maintain congruence between the provisions of the Companies Act and the DT Regulations.
4. Accordingly, based on the deliberations held in the Corporate Bonds and Securitization Advisory Committee (CoBoSAC) meeting and taking cue from sub-rule 2(c)(iii) of Rule 18 of SCD Rules and Regulation 13A(a)(iv) of the DT Regulations, it is clarified that the term “pecuniary relationship” in Regulation 13A(a)(vii) of the DT Regulations excludes the remuneration payable to the DT by the issuer.
5. Further, based on the discussions held with the Working Group and CoBoSAC, it has been decided that, henceforth, the issuer shall disclose in the offer document the remuneration/ revenue received by the DT from the issuer in respect of debenture trusteeship services as a percentage of the total remuneration/

revenue received by DT from the said issuer in respect of all services (including services other than the debenture trusteeship services), over the last three financial years.

Illustration:

If the remuneration/ revenue received by the DT from the issuer in respect of debenture trusteeship services is INR 3 lakh (for last three financial years), while the revenue received by the DT in respect of services other than debenture trusteeship services from the said issuer is INR 12 Lakh (for last three financial years), the percentage of remuneration/ revenue received by the DT in respect of debenture trusteeship services from the said issuer shall be calculated as below:

- Revenue received by the DT in respect of debenture trusteeship services – 3 Lakh
- Revenue received by the DT in respect of services other than debenture trusteeship services from the said issuer – 12 Lakh
- Total revenue received by the DT in respect of all services from the said issuer – 15 Lakh

Hence, percentage to be disclosed in the Offer Document is “20 per cent” (i.e. 3 Lakh/ 15 Lakh).

6. This circular shall be applicable with immediate effect.
7. This circular is issued with the approval of competent authority, in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 2A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.
8. This Circular is available on the website of the Securities and Exchange Board of India at www.sebi.gov.in under the category “Legal” and under the drop down “Circulars”.