

Measures for Reforms to Debenture Trustees Regulations including towards Ease of Doing Business

1. Objective

- 1.1. This Board Memorandum proposes amendments to the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021 ("NCS Regulations"), SEBI (Debenture Trustees) Regulations, 1993 ("DT Regulations") and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2014 ("LODR Regulations") to introduce measures for Ease of Doing Business ("EoDB") for DTs.
- 1.2. This Board Memorandum also proposes to apprise the Board of the guidelines to be issued by SEBI by way of circulars to give effect to EoDB measures for DTs.

2. Background

- 2.1. 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.
- 2.2. Further, in order to promote the EoDB and reduce the compliance burden, SEBI vide Press Release dated October 04, 2023 had also sought comments from the public on various SEBI Regulations.
- 2.3. To improve ease of doing business related to activities of DTs, a working group was constituted by SEBI to examine and give recommendations on EoDB measures including on the comments received from public and regulated entities.
- 2.4. The recommendations of the working group on EoDB ("Working Group") were placed before the Corporate Bonds and Securitisation Advisory Committee ("CoBoSAC") and based on the recommendations of CoBoSAC and subsequent deliberations, SEBI issued a consultation paper titled ["Consultation Paper on Measures for Reforms to Debenture Trustees Regulations including towards Ease](#)

[of Doing Business](#)” seeking comments / views / suggestions from the public on the measures. The recommendations of the CoBoSAC along with public feedback have been considered for the proposals made to the Board.

3. Consultation

3.1. A total of 17 entities responded to the consultation paper with their views/ inputs/ suggestions. The respondents include Department of Economic Affairs, market participants, debenture trustees, law firms, practicing company secretaries and investors. The respondents are broadly in agreement with the proposed measures and a summary of the respondents agreeing / partially agreeing / disagreeing to the proposals made in the consultation paper is as under:

Propo sal No.	Proposal Description	in number (and in %)			
		Agree	Partially Agree	Disagree	Total Count
1.1	Whether the proposal to hive off the DT activities, other than those regulated by any Financial Sector Regulator or any authority as may be specified by SEBI, to a separate legal entity is appropriate and adequate?	2 (20%)	2 (20%)	6 (60%)	10 (100%)
1.2	Whether the sunset period of 1 year, beyond which the hived-off entity shall not use the brand or corporate name of the regulated entity, is appropriate and adequate?	2 (33%)	2 (34%)	2 (33%)	6 (100%)
1.3	Whether the proposed amendments for instituting Activity Based Regulation for DTs are appropriate and adequate?	2 (40%)	0 (0%)	3 (60%)	5 (100%)

Propo al No.	Proposal Description	in number (and in %)			
		Agree	Partially Agree	Disagree	Total Count
2.1	Whether the proposal for aggregating debenture holders across ISINs for voting and decisions in case of shared security interest on pari-passu basis appropriate and adequate?	3 (23%)	6 (46%)	4 (31%)	13 (100%)
2.2	Whether the proposal being made applicable on prospective basis and choice being given in case of outstanding issuances to the debenture holders to choose the method to be followed for reckoning of default and decisions to be taken thereof, is appropriate and adequate?	2 (18%)	6 (55%)	3 (27%)	11 (100%)
2.3	Whether the insertion of definition of 'cross default' in the LODR Regulations is appropriate and adequate?	4 (31%)	5 (38%)	4 (31%)	13 (100%)
3.1	Whether the proposal to insert a new section/ Regulation 15A captioned 'Rights of DTs exercisable to aid in performance of their duties, obligations, roles & responsibilities' including the specified provisions in the DT Regulations, is appropriate and adequate?	6 (60%)	4 (40%)	0 (0%)	10 (100%)

Propo al No.	Proposal Description	in number (and in %)			
		Agree	Partially Agree	Disagree	Total Count
3.2	Whether the mandate on the depositories and stock exchanges to share the specific information with the DTs, including the specified timeline, is appropriate and adequate?	8 (89%)	1 (11%)	0 (0%)	9 (100%)
3.3	Whether the proposal to replace the phrase 'promptly' with 'unless otherwise specified, as soon as reasonably possible and in any case not later than twenty-four hours from the occurrence of the event or information', appropriate and adequate?	8 (100 %)	0 (0%)	0 (0%)	8 (100%)
3.4	Whether the timeline for submission of information by Issuers to the DTs as specified is appropriate and adequate?	6 (67%)	2 (22%)	1 (11%)	9 (100%)
4.1	Whether the proposal to explicitly specify the list of expenses for which the DT can be reimbursed from the Recovery Expense Fund (REF) is appropriate and adequate?	8 (73%)	3 (27%)	0 (0%)	11 (100%)
4.2	Whether the proposal for intimation to the debenture holders, instead of obtaining prior approval, in case of an identified list of expenses appropriate and adequate?	6 (75%)	2 (25%)	0 (0%)	8 (100%)

Propo al No.	Proposal Description	in number (and in %)			
		Agree	Partially Agree	Disagree	Total Count
4.3	Whether the proposal of obtaining prior approval, in case of other activity (other than those explicitly mentioned) towards enforcement/ legal proceedings (excluding unpaid remuneration of the DT by the issuer), appropriate and adequate?	7 (78%)	1 (11%)	1 (11%)	9 (100%)
4.4	Whether the proposal of updating the debenture holders regarding the utilization of REF on a periodic basis appropriate and adequate?	8 (100%)	0 (0%)	0 (0%)	8 (100%)
4.5	Whether the proposal for submission of an independent auditor's certificate by the DTs to the Stock Exchange regarding the expenses incurred and its verification, before reimbursement from the REF appropriate and adequate?	6 (67%)	1 (11%)	2 (22%)	9 (100%)
5.1	While multiple model Debenture Trust Deeds (DTDs) may be published by SEBI in consultation with ISF, whether the current proposal of providing a model DTD having four parts - Part A to Part D, is appropriate and adequate?	5 (36%)	2 (14%)	7 (50%)	14 (100%)
5.2	Whether the proposal that the model DTD may be deviated from, provided that a key summary sheet capturing	5 (38%)	2 (16%)	6 (46%)	13 (100%)

Propo al No.	Proposal Description	in number (and in %)			
		Agree	Partially Agree	Disagree	Total Count
	the deviations along with rationale is included in the GID/ KID/ Shelf Prospectus, is appropriate and adequate?				
5.3	Whether the amendment to Regulation 18(4) of NCS Regulations and Regulation 14 of the DT Regulations is appropriate and adequate?	8 (61%)	3 (23%)	2 (16%)	13 (100%)

3.2. The suggestions received from Working Group, CoBoSAC recommendations on the same, feedback received pursuant to public consultation and views of SEBI thereon are summarized at Annexure A. The reference to relevant table of Annexure A has been made in the proposals mentioned in subsequent paras.

4. Specifying Activity Based Regulation for DTs (Table No. 1)

4.1. Extant Regulatory Provision

4.1.1. Regulation 13A of DT Regulations provides for scenarios in which a SEBI-registered DT cannot be appointed as a DT to an issuance. The DT Regulations do not explicitly provide restrictions for carrying out any other activities/ services by the DTs.

4.2. Rationale for proposed change

4.2.1. DT Regulations have been notified by SEBI in order to regulate trusteeship activities being carried out by DTs, as required under various SEBI

Regulations. However, based on the data obtained from top five active DTs for FY 2022-23 and FY 2023-24, it is observed that DTs are also undertaking significant amount of other activities, that do not fall under the purview of SEBI, as given in the table below:

Type of Business Activity/ services being provided by DTs	Total revenue (INR crores)	% of total revenue
Activities under SEBI purview (Listed NCDs, AIF Trustee, REIT/ InvIT Trustee)	170.14	29.66
Trusteeship activities under purview of other regulators (Securitisation trustee, security trustee, public deposit trustee)	205.64	35.85
Trusteeship Services (Share pledge, escrow agent, facility agent, Monitoring Agent, etc.) and Trustee for unlisted NCDs not appearing to be regulated or under any other authority	163.52	28.51
Others	34.31	5.98
Total	573.61	100.00

4.2.2. The revenue received for activities falling under the purview of SEBI aggregates to approximately only 30% of the total revenue of the trustee business. Thus, a significant amount of commercial relationship of the trustees is associated with issuer company in terms of providing other forms of businesses, which are outside the purview of SEBI, and accordingly where SEBI is not able to deal with the grievances of investors/ other stakeholders or issues as may arise from such activities.

4.2.3. While, it is observed that some of the DT activities fall under the purview of other Financial Sector Regulator/ authority, there are some of the activities where it is not clear as to which authority is regulating the same. Hence, DT activities which are not under the purview of SEBI and any other Financial

Sector Regulator/ Authority may pose regulatory and systemic risks in the market.

4.3. Proposal

4.3.1. It is proposed to amend DT Regulations to specify the following:

4.3.1.1. The DTs shall not carry out any activity other than the trusteeship activities of securities that are listed or proposed to be listed on a stock exchange recognized by the Board. However, the DTs, which are a regulated entity under purview of Financial Sector Regulator/ Authority (other than SEBI), may continue to carry out activities under the purview of such Financial Sector Regulator/ Authority or activities notified by SEBI, under the guidelines of the Financial Sector Regulator/ Authority as may be specified from time to time. Further, DTs which are not a regulated entity under purview of Financial Sector Regulator/ Authority (other than SEBI) can carry out activities under the purview of any Financial Sector Regulator/ Authority or activities notified by SEBI, only under express guidelines of a Financial Sector Regulator/ Authority specifically issued towards such ends. Additionally, grievances related to such activities, not falling under the purview of SEBI, shall also come under the jurisdiction of the respective Financial Sector Regulator/ Authority. SEBI-registered DTs, while undertaking activities other than SEBI-regulated activities, should not project themselves as SEBI-regulated DTs and explicitly specify the regulator/ authority under whose purview such activities are being undertaken.

4.3.1.2. All the other activities being undertaken by DTs, not falling under the purview of any Financial Sector Regulator or any authority as may be specified by SEBI or which require issuance of express guidelines of a Financial Sector Regulator/ Authority when such guidelines have not been issued, need to be hived off to a separate legal entity within a period of 1 year from the date of notification. The hived-off legal entity

shall not use the brand or corporate name of the regulated entity beyond a sunset period of 1 year from the date of creation of the such legal entity. The regulated entity, undertaking DT activities, may share resources (people, infrastructure, IT, safekeeping facilities, etc.) with the hived-off entity, while segregating legal liability.

4.3.1.3. Entities that do not propose to undertake SEBI-regulated activities need not seek registration.

4.3.1.4. This measure shall also assist the DT which are inactive, or continuing their registration only on account of any residual role as a trustee which may be under the domain of other financial sector regulators or which may be in the unregulated domain.

5. Definition of “cross-default” and aggregation of debenture holders across ISINs for voting and decisions in case of shared security interests (Table No. 2)

5.1. Extant Regulatory Provision

5.1.1. Currently, the DTD deals with the scenario of “cross default”, i.e. default by the issuer on another debt security. The term “cross-default” is not defined in the LODR Regulations.

5.1.2. Further, any default by the issuer is considered as an ISIN level default, irrespective of whether the debt securities are issued under a single offer document or more than one offer document.

5.1.3. Regulation 17(2) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“NCS Regulations”) reads as under:

“(2) Any default committed by the issuer shall be reckoned at the International Securities Identification Number level notwithstanding the debt securities and/or non-convertible redeemable preference shares being issued under different offer documents.”

5.1.4. Further, Clause 1.2 of Chapter X on “Breach of Covenants, Default and Remedies” in the Master Circular for DTs dated May 16, 2024 (“Master Circular for DTs”) reads as under:

“In the manner of calling ‘event of default’, due to the presence of multiple ISINs which may have been issued under the same offer document or a single ISIN which may have been split across multiple offer documents it is clarified that ‘event of default’ shall be reckoned at the ISIN level, as all terms and conditions of issuance of security are same under a single ISIN even though it might have been issued under multiple offer documents.”

5.2. Recommendation of Working Group (WG) and proposal in Consultation paper

5.2.1. Currently, DTs face difficulties in obtaining requisite approvals in cases where there is shared security interest and where the default is not triggered across ISINs.

5.2.2. In this regard, the WG observed the following based on the cross-default clauses in certain DTDs:

5.2.2.1. Default in one ISIN triggers the default in all the ISINs under a single offer document;

5.2.2.2. Default in one ISIN triggers the default in all the ISINs issued by a single issuer;

5.2.2.3. Defaults in the case when two charges (pari-passu or senior/subordinate) are created on a single asset, wherein decision of debenture holders of one ISIN with respect to the security creation/enforcement affects the other debenture holders of other ISIN.

5.2.3. The WG recommended that where the security interest is shared across multiple ISINs or there are shared rights, decisions and voting shall be done across all such ISIN-holders.

5.2.4. It was observed that wherever security interests are shared across ISINs, most of the security interests are shared on pari-passu basis. Accordingly, it was proposed in consultation paper that in cases where the security interest is shared across multiple ISINs on pari-passu basis, decisions and voting can be aggregated across all such ISIN-holders and, in case there are multiple debenture trustees involved, they can coordinate amongst each other for the voting and decision to be taken thereof. Otherwise, since all the terms and conditions are same at the ISIN level and same is pari-passu, the reckoning of the event of default and the voting and decisions thereafter shall continue to be done at the ISIN level.

5.2.5. However, certain disagreements received as part of the public consultation stated as under:

5.2.5.1. The proposal of bringing voters across ISINs subjects the bond holders of one ISIN to decisions of bond holders of other ISINs. Further, due to lack of inter creditor agreements as a norm, lenders having same shared security would be able to exercise their rights whilst bond holders wouldn't be able to.

5.2.5.2. The proposal may also possibly increase the timeline for enforcement.

5.2.5.3. Mandating a definition of cross default that is limited to the listed debt market, would reduce the flexibility of the debenture holders.

5.3. Proposal

5.3.1. In view of the merit in the disagreements, it is proposed to continue with the present provisions of voting at ISIN level and not define cross-default explicitly in the regulations.

6. Insertion of provisions in DT Regulations specifying Rights of DTs exercisable to aid in performance of their fiduciary duties, obligations, roles &

responsibilities and corresponding obligations on the issuer under LODR Regulations to enable timely fulfilment of duties by DTs (Table No. 3)

6.1. Extant Regulatory Provision

6.1.1. Currently, there is no distinct provision available in the DT Regulations specifically as "Rights of DTs exercisable to aid in performance of their duties, obligations, roles & responsibilities". Instead Regulation 15 of DT Regulations have provisions ranging from 15(1)(a) to 15(7) under the head "Duties of DTs", which are in the nature of the rights to be exercised by the DTs.

For example, Regulation 15(5) which inter-alia reads as under:

“A debenture trustee may inspect books of account, records, registers of the body corporate and the trust property to the extent necessary for discharging its obligations.”

6.1.2. Regulation 56 (1) of the LODR Regulations mentions the list of information/documents that the listed entity shall forward to the DTs promptly.

6.1.3. Regulation 30 (6) of the LODR Regulations reads as under:

“The listed entity shall first disclose to the stock exchange(s) all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:

(i) thirty minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken;

(ii) twelve hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity;

(iii) twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity:

Provided that disclosure with respect to events for which timelines have been specified in Part A of Schedule III shall be made within such timelines:

Provided further that in case the disclosure is made after the timelines specified under this regulation, the listed entity shall, along with such disclosure provide the explanation for the delay.”

6.1.4. Regulation 56(2) of LODR Regulations reads as under:

“The listed entity shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.”

6.2. Recommendation of Working Group and Rationale

6.2.1. On account of the absence of distinct provisions in the DT Regulations with regard to "Rights of DTs exercisable to aid in performance of their duties, obligations, roles and responsibilities", the WG had recommended to omit certain provisions of Regulation 15 and insert them under the distinct head “Rights of the DTs” inter-alia providing the DT the right to call for information from the issuer and right to be reimbursed from the Recovery Expense Fund (REF) towards expenses incurred for enforcement of the security.

6.2.2. Further, the WG also mentioned regarding certain compliance obligations, especially in terms of the timeline for compliance by the issuers, which have been bestowed upon the DTs; however, corresponding responsibility, in respect of such provisions, has not been explicitly established for the Issuers. Hence, the WG recommended alignment of the post-issue related duties of DTs with Regulation 30 and Regulation 56 of LODR Regulations such that the responsibility of submitting the documents and intimations falls primarily on the issuer. The same would further enforce the present obligations on the part of the issuer to provide the requisite documentation to DTs in a timely manner thereby enabling the DTs to perform their functions efficiently. Such change will also enable the DTs to keep a track of the status of compliances by the issuer and would also be in the interest of the debenture holders.

6.3. Proposal

- 6.3.1. It is proposed to omit Regulation 15(5) and introduce a specific section “Rights of DTs exercisable to aid in performance of their duties, obligations, roles & responsibilities” inter-alia providing the DT the right to call for information from the issuer and right to be reimbursed from the REF towards expenses incurred for enforcement of the security up to the pre-specified limit specified by SEBI, of 0.01% of issue size subject to maximum of Rs. 25 lakhs.
- 6.3.2. It is also proposed that Regulation 56(1) of LODR Regulations may be modified to the extent that the phrase “promptly” may be replaced with ‘unless otherwise specified, as soon as reasonably possible and in any case not later than twenty-four hours from the occurrence of the event or information’ (taking cue from Regulation 30(6) for events that are external to the entity in case of equity issuances).
- 6.3.3. Additionally, it is proposed that in respect of four provisions, corresponding timeline for compliance with the obligation may be mandated on the issuer by way of circular in order to bring clarity. The same is placed at Annexure C and is for information of the Board.

7. Modifications to the manner of utilisation of REF (Table No. 4)

7.1. Extant Regulatory Provision

- 7.1.1. Currently, DT Regulations and Circulars issued thereunder provide for utilization of REF towards actions in respect of enforcement/ legal proceedings in relation to the debt securities.
- 7.1.2. With regard to the manner of utilization of the Recovery Expense Fund, Clause 2.1 of Chapter IV of the Master Circular for DTs on REF specifies as under:
- “In the event of default, the Debenture Trustee/ Lead Debenture Trustee shall obtain the consent of holders of debt securities for enforcement/ legal proceedings and shall inform the same to the Designated Stock Exchange. The

Designated Stock Exchange shall release the amount lying in the REF to the Debenture Trustee/ Lead Debenture Trustee within five working days of receipt of such intimation."

7.1.3. Clause 2.3 of Chapter IV of Master Circular for DTs on REF specifies as under:

"The Debenture Trustee shall keep a proper account of all expenses incurred out of the funds received from REF towards Legal expenses, cost for hosting meetings etc. towards enforcement/ legal proceedings in relation to the Debt securities."

7.2. Recommendation of Working Group and Rationale

7.2.1. As per the Master Circular for DTs, REF is a fund created in order to enable the DT to take prompt action for enforcement/ legal proceedings in case of 'default' in listed debt securities. While the clause 2.3 specifies the broad purpose of REF, it does not explicitly specify the list of purposes for which REF can be utilized and hence, the DTs face certain difficulties in obtaining consent as well as reimbursement from REF.

7.2.2. The WG had recommended that the list of expenses to be incurred from REF may include (but not be limited to) obtaining various consents from debenture holders, voting process, holding of meetings of debenture holders, filing applications, legal fees, appointment of consultants in respect of enforcement/ legal proceedings in the event of default, unpaid fees/ remuneration of DT above three months, etc.

7.2.3. Further, the WG recommended that instead of receiving prior approval from the debenture holders, an intimation through mail/ upload on the website proposing for withdrawal from REF may be given to the debenture holders.

7.3. Proposal

7.3.1. It is proposed to explicitly add 'obtaining various consents from debenture holders', 'voting process', 'filing court applications', 'legal fees', 'expenses for

asset recovery services’ and ‘appointment of consultants in respect of enforcement/ legal proceedings in the event of default’ to the list of expenses to be reimbursed from REF.

7.3.2. Intimation to the debenture holders, instead of obtaining prior approval, may be considered for the list of expenses explicitly being specified as above. Further, in case there is any other activity (other than those explicitly mentioned) towards enforcement/ legal proceedings (excluding unpaid remuneration of the DT by the issuer) for which expense needs to be incurred by DTs, then approval of debenture holders (including e-voting) should be obtained in such cases before obtaining reimbursement from the REF. The DTs shall on annual basis update the debenture holders regarding the audited utilization of such funds. The Debenture Trustee shall also submit an independent auditor’s certificate regarding the expense incurred to the Stock Exchange, which shall be verified by the Stock Exchange before release of the amount from the REF to the DT.

7.3.3. The above changes shall be made to the Chapter IV of the Master Circular for DTs and the same is placed at Annexure D for information of the Board.

8. Standardisation of Debenture Trust Deed (DTD) (Table No. 5)

8.1. Extant Regulatory Provision

8.1.1. Regulation 18(4) of NCS Regulations and Regulation 14 of the DT Regulations reads as under:

“Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as specified in section 71 of Companies Act, 2013 and Form No.SH.12 specified under the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts:

- a. Part A containing statutory/standard information pertaining to the debt issue;
- b. Part B containing details specific to the particular debt issue.”

8.2. Rationale for proposed change

8.2.1. While Regulation 18(4) of NCS Regulations and Regulation 14 of DT regulations specify the broader principles of DTD, it does not prescribe any standard draft of DTD to be adopted by the issuers. In view of the above, the DTDs have been observed to have very different contractual terms and approaches towards documentation that varies from issuance to issuance.

8.2.2. In view of the above, an Industry Body - Industry Standards Forum – Debt (ISF-Debt), for the purpose of standardization in the contents and format of the DTD, was formed to provide model DTDs in line with the matters specified in the SEBI Regulations, Section 71 of the Companies Act, 2013 and Form No. SH.12 specified under the Companies (Share Capital and Debentures) Rules, 2014. It was envisaged to have multiple model DTDs, including those that serve secured/ unsecured debentures, different types of issuers (financial/ manufacturing /infrastructure/ business trusts, etc.) or different nature of issuances (investment grade or non-investment grade), etc. These standardized formats of DTDs would act as reference points for the Issuers and the DTs.

8.2.3. ISF-Debt has provided four model DTDs (broadly divided into four parts - Part A to Part D), dividing the same into four categories - secured public issue, unsecured public issue, secured privately placed issue and unsecured privately placed issue.

8.3. Proposal

8.3.1. It is proposed to amend Regulation 18(4) of NCS Regulations and Regulation 14 of the DT Regulations in order to enable SEBI to provide the formats for model DTDs. The model DTDs shall be specified by way of circular. The model DTD specified by way of circulars may be deviated from, provided that a key summary sheet, capturing the deviations along with the rationale for the same,

is provided by the issuer in the General Information Document (GID)/ Key Information Document (KID) or Shelf Prospectus.

9. Proposal to the Board:

9.1. The Board is requested to

9.1.1. consider and approve the proposals as detailed under sub-para no. 3 of para no's 4, 5, 6 and 8 above and the consequent draft amendment notifications placed at Annexure B;

9.1.2. authorize the Chairperson to make consequential and incidental changes and take necessary steps to give effect to the decisions of the Board.

Annexure – A

Table 1: Specifying Activity Based Regulation for DTs (Para 4 of board memorandum)

S. No	Proposal in Consultation Paper	Summary of Public Comments not in support of the proposal/ Additional Suggestions	SEBI views	Revised Proposal, if applicable	CoBoSAC views
1.	Specifying Activity Based Regulation for DTs Proposal: 1. The DT activities, other than those regulated by any Financial Sector Regulator or any authority as may be specified by SEBI, need to be hived off to a separate legal entity. Further, the hived off entity shall not use the brand or corporate name of the regulated entity beyond a sunset period of	The proposal of hiving off DT activities in to separate entity should be decided on case-to-case basis depending upon the size volume turnover of the respective DT since the said proposal for small and mid-sized DTs will cause serious administrative and financial challenges and hardships as the human resources software office space infrastructure legal compliances are not usually bifurcated or	The suggestion may not be accepted as a case-to-case basis approach is neither feasible nor efficient for the market. However, cases of entities facing difficulties (beyond their control) for hiving off, can be examined on a case-to-case basis and provided time for a further period of 6 months to	1. The DT activities, other than those regulated by any Financial Sector Regulator or any authority as may be specified by SEBI, need to be hived off to a separate legal entity within a period of 1 year from the date of notification. Cases of entities facing difficulties (beyond their control) for hiving off, can be examined on a case-to-case basis for a further period of 6 months.	CoBoSAC is broadly in agreement with the revised proposal and mentioned to go ahead with the proposal, whilst continuing to engage with RBI for it to determine how it would want to regulate activities of

	<p>1 year. The hived off entity, however, may share resources with the DT while segregating legal liability. The DTs may continue to carry out activities under the purview of any Financial Sector Regulator/ Authority or activities notified by SEBI, provided that the guidelines for such activities have been stipulated by the respective Financial Sector Regulator/Authority. Additionally, grievances related to such activities, not falling under the purview of SEBI, shall also come under the</p>	demarcated for regulated or unregulated business or services.	complete the hiving off.	<p>Further, the hived off entity shall not use the brand or corporate name of the regulated entity beyond a sunset period of 1 year. The hived off entity, however, may share resources with the DT while segregating legal liability. The DTs may continue to carry out activities under the purview of any Financial Sector Regulator/ Authority or activities notified by SEBI, provided that the guidelines for such activities have been stipulated by the respective Financial Sector Regulator/ Authority. Additionally,</p>	<p>DTs that are within RBI domain and that substantial number of DTs are banks or subsidiaries/ affiliates of banks.</p>
		<p>Since unregulated activities of DTs are less than 20%, need not be hived-off. Most of such unregulated activities are supplementary to debt market & hiving-off those, may pose several implementation problems and also affect investors. Rather than hiving off to a separate entity, SEBI-registered DTs should be permitted to continue offering these unregulated</p>	<p>The concern emanates from the nature of such activities and not mainly the volume of such activities. Further, except legal liability, sharing of resources (people, infrastructure, IT, safekeeping facilities, etc.) is being allowed. Hence, there is no increase in the cost of operations. Further,</p>		

Final Proposal:
Instead of examining entities on a case-to case basis for hiving off, it is proposed that the hived off legal entity shall be

	jurisdiction of the concerned financial sector regulator/ authority.	services, with a disclaimer that these services are not regulated by SEBI and that mechanisms like SCORES and ODR will not be available to investors.	hiving off unregulated activities would not in any way lead to increase in cost of compliance burden. They merely have to enter into contractual agreements for sharing of resources and other roles and responsibilities.	grievances related to such activities, not falling under the purview of SEBI, shall also come under the jurisdiction of the concerned financial sector regulator/ authority.	allowed to use the brand or corporate name of the regulated entity for a period of 1 year from the date of creation of the hived-off entity. Rest of the proposal remains similar along the lines of CRA Regulations.
	2. SEBI-registered DTs, undertaking activities other than SEBI-regulated activities, should not project themselves as SEBI-regulated DTs and explicitly specify the regulator/ authority under whose purview such activities are undertaken and do so in adherence to the rules or regulations or guidelines issued by such regulator/authority.	The practical challenges and compliance burden of implementing the proposal to transfer DT activities, except those regulated by a Financial Sector Regulator, to a separate legal entity need to be examined		2. SEBI-registered DTs, undertaking activities other than SEBI-regulated activities, should not project themselves as SEBI-regulated DTs and explicitly specify the regulator/ authority under whose purview such activities are undertaken and do so in adherence to the rules or regulations or guidelines issued by such regulator/authority.	
	3. Further, Trustees that do not propose to undertake SEBI-regulated activities need not seek registration with SEBI.	Restricting use of proprietary brand would nullify the substantial goodwill and reputation established in both regulated as well as unregulated services. The same will not ensure	It may be noted that a sunset period has been envisaged for the transition and to build the investor confidence for the hived-off entity. In view of the fiduciary		

	<p>Rationale: In order to institute Activity-based regulatory framework for DTs.</p>	<p>investor confidence on such entity which shall act as Trustee for unregulated hived off products. Even though similar approach was taken for CRAs in 2022 CRAs have created separate legal entity the branding for such hived off entity remains the same. For eg. CARE the branding of the different entity remains the same.</p>	<p>nature of the debenture trustee, it may not be appropriate to allow the usage of the brand name of the regulated entity for the unregulated hived off entity.</p>	<p>3. Further, Trustees that do not propose to undertake SEBI-regulated activities need not seek registration with SEBI.</p>	
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Table 2: Definition of “cross-default” and aggregation of debenture holders across ISINs for voting and decisions in case of shared security interests (Para 5 of board memorandum)

S. No.	Recommendation of the Working Group	Recommendation of CoBoSAC	Proposal in Consultation Paper	Summary of Public Comments not in support of the proposal/ Additional Suggestions	Revised Proposal, if applicable	CoBoSAC views
1.	Since all the terms and conditions are same at the ISIN level, the reckoning of the event of default and the voting and decisions thereafter can continue to be done at the ISIN level. However, in cases where	CoBoSAC broadly agreed with the proposal. However, the members suggested that the proposal be made applicable on prospective basis and choice maybe given for legacy/ outstanding	<p>Inclusion of definition of “cross-default” and aggregation of debenture holders across ISINs for voting and decisions in case of shared security interests</p> <p>1. In cases where the security interest is shared across multiple ISINs on pari-passu basis, the decisions and voting can be aggregated across all such ISIN-holders and, in case there are multiple DTs involved, they can coordinate amongst each other for the voting and decisions to be taken thereof. Otherwise, since all the terms and conditions are</p>	<p>Out of the total 37 comments received in respect of the 3 queries sought on this agenda, 26 (70%) are in agreement with the proposal and 11 are in disagreement with the proposal.</p> <p>The summary of the comments not in favor are as under:</p> <p>i. The proposal to consolidate ISINs for voting on a pari-passu basis would reduce the</p>	<p>Given that majority of comments are in favour of aggregating the votes at pari-passu basis and to make it applicable on prospective basis only and not to allow a choice to the</p>	<p>CoBoSAC broadly agreed with the proposal. The chair advised to reach a logical conclusion pursuant to the discussion with the law firms and</p>

the security interest is shared across multiple ISINs, decisions and voting can be aggregated across all such ISIN-holders and, in case there are multiple debenture trustees involved, they can coordinate amongst each other for the voting and	cases to the debenture holders to choose the method to be followed for reckoning of default and decisions to be taken thereof. Further, the members were in agreement of aggregating the voting across all ISINs having shared security interests on pari-passu basis. However,	<p>same at the ISIN level, the reckoning of the event of default and the voting and decisions thereafter shall continue to be done at the ISIN level.</p> <p>2. The above proposal shall be made applicable on prospective basis and choice shall be given in case of outstanding issuances to the debenture holders to choose the method to be followed for reckoning of default and decisions to be taken thereof.</p> <p>3. Further with regard to aggregation across ISINs having security interests on first/ second/ senior/ subordinate/ residual basis, it is felt that the same may not be appropriate since such debenture</p>	<p>flexibility of investors who have agreed to a pre agreed majority thresholds for enforcement of security in individual offer documents or DTDs. It would subject the bond holders of one ISIN to decisions of bond holders of other ISINs. Further, due to lack of inter creditor agreements as a norm, lenders having same shared security would be able to exercise their rights whilst bond holders wouldn't be able to.</p> <p>ii. The proposal may lead to possible increase in timeline for enforcement.</p>	debenture holders of outstanding issuances, we may accordingly align the proposal on these lines.	<p>internally and accordingly, take the agenda forward</p> <p><u>Final proposal:</u></p> <p>Considering the merit in the disagreements, it is proposed to continue with the present provisions of voting at ISIN level and not</p>
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	decision to be taken thereof.	suggested that in case of presence of cross default clauses, the legal implications need to be tested and accordingly, the members suggested to seek legal opinion.	<p>holders do not have equal charge/ rights on the security.</p> <p>4. The following definition of “cross-default” may be inserted under the LODR Regulations: “Cross default’ shall mean specification in a debt security that default in another debt security triggers default in the first mentioned debt security, and therefore in the said ISIN.”</p> <p>Rationale: In order to address the difficulties being faced by DTs in obtaining requisite approval from debenture holders under different ISINs, especially in case where there is shared security interest but the default is not triggered across ISINs.</p>	<p>iii. The standard definition of cross default in most debt documents refers to default in respect of any other financial indebtedness and not just other debt securities. The proposed definition has a narrower ambit.</p> <p>Majority of comments are in favour of aggregating the votes at pari-passu basis.</p> <p>Further, majority have suggested to make it applicable on prospective basis only and not to allow a choice to the debenture holders of outstanding issuances.</p>		define cross-default explicitly in the regulations .
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Table 3: Insertion of provisions in DT Regulations specifying Rights of DTs exercisable to aid in performance of their fiduciary duties, obligations, roles & responsibilities and corresponding obligations on the issuer under LODR Regulations to enable timely fulfilment of duties by DTs (Para 6 of board memorandum)

S. No	Recommendation of the Working Group	Recommendation of CoBoSAC	Proposal in Consultation Paper	Summary of Public Comments not in support of the proposal/ Additional Suggestions	Revised Proposal, if applicable	CoBoSAC views
1.	<p>Introduce a distinct head “Rights of DTs”, which shall read as under:</p> <p>“Rights of the debenture trustee</p> <p>(1) A debenture trustee may inspect books of account, records, and registers of the issuer and the</p>	CoBoSAC broadly agreed with the proposal.	<p>Insertion of provisions in DT Regulations specifying Rights of DTs exercisable to aid in performance of their fiduciary duties, obligations, roles & responsibilities and corresponding obligations on the issuer under LODR Regulations to enable timely fulfilment of duties by DTs</p> <p>The proposal in respect of specifying rights of DTs, may be specified as under:</p> <p>“Rights of the DTs”</p> <p>(1) A debenture trustee may inspect books of account, records, and registers of the issuer and</p>	Out of the total 36 comments received in respect of the 4 queries sought on this agenda, 35 (97%) are in agreement with the proposal and only 1 is in disagreement with the proposal.	No Change	<p>CoBoSAC agreed with the proposal.</p> <p><u>Final proposal:</u></p> <p>No change</p>

<p>trust property to the extent necessary for discharging its obligations.</p> <p>(2) A debenture trustee:</p> <p>(a) may call for any information/ documents from the issuer with respect to the issuance.</p> <p>(b) may call for documents from various intermediaries, as may be specified by the Board from time to time.</p> <p>(c) may call for and utilize Recovery Expense Fund, with the consent of the</p>		<p>the trust property to the extent necessary for discharging its obligations.</p> <p>(2) A debenture trustee:</p> <p>(a) may call for any information/ documents from the issuer with respect to the issuance.</p> <p>(b) may call for documents from various intermediaries, as may be specified by the Board from time to time.</p> <p>(c) may call for and utilize Recovery Expense Fund, with the consent of the debenture holders, in the manner as specified by the Board.”</p> <p>Further, the term ‘promptly’ may be replaced with ‘unless otherwise specified, as soon as reasonably possible and in any case not later than twenty-four hours from the occurrence of the event or information’ in Regulation 56(1) of LODR Regulations.</p> <p>Additionally, in respect of four provisions, corresponding timeline for compliance with the</p>			
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	debenture holders, in the manner as specified by the Board.”		obligation may be mandated on the issuer by way of circular (placed at Annexure C) in order to bring clarity. Rationale: In order to empower DTs to perform/ discharge their obligations and duties efficiently and in a timely manner.			
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Table 4: Modifications to the utilization of REF (Para 7 of board memorandum)

S. No.	Recommendation of the Working Group	Recommendation of CoBoSAC	Proposal in Consultation Paper	Summary of Public Comments not in support of the proposal/ Additional Suggestions	Revised Proposal, if applicable	CoBoSAC views
1.	1. Make REF as a fund incurring expenses during the tenure of the instrument rather than limiting it for the purpose of incurring	1. As REF is a fund created in order to enable the Debenture Trustee take prompt action for	Modifications to the utilization of REF 1. Explicitly add the following to the list of expenses to be reimbursed from REF:	Out of the total 45 comments received in respect of the 5 queries sought on this agenda, 42 (93%) are in	No Change Additionally, Trustees Association of India	CoBoSAC agreed with the proposal.

	<p>expenses towards legal expenses/ enforcement proceedings.</p> <p>2. The list of expenses to be incurred from REF may include (but not limited to) obtaining various consents from debenture holders, voting process, holding of meetings of debenture holders, filing applications, legal fees, appointment of consultants in respect of enforcement/ legal proceedings in the event of default, unpaid fees/ remuneration of</p>	<p>enforcement/legal proceedings in case of 'default' in listed debt securities, CoBoSAC suggested against the suggestion to make REF for during the tenure.</p> <p>2. CoBoSAC agreed with the proposal except "unpaid fees/ remuneration of DT above three months" suggesting that the recovery of</p>	<ul style="list-style-type: none"> • obtaining various consents from debenture holders, • voting process, • filing court applications, • legal fees, • expenses for asset recovery services • appointment of legal consultants in respect of enforcement/ legal proceedings in the event of default <p>2. Intimation to the debenture holders, instead of obtaining prior approval, may be considered for the list of expenses explicitly being specified as above. Further, in case there is any other activity (other than those explicitly mentioned) towards enforcement/ legal proceedings (excluding unpaid remuneration of the DT by the issuer) for which expense</p>	<p>agreement with the proposal and 3 are in disagreement with the proposal.</p> <p>The summary of the comments not in favour are as under:</p> <p>i. The precondition of DTs spending out of their pockets needs reconsideration. It can be financially damaging and unviable thereby diminishing the effective capability of DTs to protect the interest of debenture holders.</p>	<p>(TAI) shall be asked to devise the a standard format for auditor certificate.</p>	<p><u>Final proposal:</u></p> <p>No change</p>
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	<p>DT above three months, etc.</p> <p>3. Instead of receiving prior approval from the debenture holders, an intimation through mail/ upload on the website proposing for withdrawal from REF may be given to the debenture holders.</p> <p>4. Insertion of a provision asking Issuer to top up the REF from time to time in order to maintain the thresholds as prescribed by SEBI.</p>	<p>unpaid remuneration from REF may create moral hazard issues with regard to fiduciary duties if the DTs towards the interest of the debenture holders.</p> <p>3. CoBoSAC agreed with the proposal.</p> <p>4. CoBoSAC disagreed with the suggestion.</p>	<p>needs to be incurred by DTs, approval of debenture holders (including e-voting) should be obtained before obtaining reimbursement from the REF.</p> <p>3. The DTs shall on a periodic basis update the debenture holders regarding the utilization of such funds.</p> <p>4. The DT shall also submit an independent auditor's certificate to the Stock Exchanges regarding the expense incurred, which shall be verified by the Stock Exchanges before release of the amount from the REF to the DT.</p> <p>Rationale: In order to empower DTs to perform/ discharge their obligations and duties efficiently and in a timely manner.</p>	<p>iii. Independent auditor's certificate will create additional burden on Debenture Trustees and may discourage in utilisation of REF.</p> <p>Further, one of the comments has suggested to devise a standard format for the auditor certificate.</p>		
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Table 5: Standardisation of Debenture Trust Deed (DTD) (Para 8 of board memorandum)

S. No.	Proposal in Consultation Paper	Summary of Public Comments not in support of the proposal/ Additional Suggestions	SEBI views	Revised Proposal, if applicable	CoBoSAC views
1.	<p>Standardisation of Debenture Trust Deed (DTD)</p> <p>Proposal:</p> <p>1. A model DTD for secured NCDs may be specified that shall aid issuers in preparing the DTD for all their issuances, including their different contractual terms and approaches that varies from issuance to issuance. The model DTD shall be divided into the following four broad sections:</p> <p>a. Part A – comprising the terms that could be standardized across all issuances. For example, provisions relating to meeting of debenture holders, general representations on status, capacity, compliance with laws etc.</p>	<p>The commercial intent between the parties for each of the issuances varies. Consequently, deviations are generally because of the commercial intent as mutually agreed between the parties viz. Issuer DT and the Investor. Further as the intent is the standard model can be deviated thus a disclosure to that effect should be sufficient. Further, debenture holders may can have access to the DTD for their reference and also important clauses w.r.t the security cover and events of default are already forming part of the GID and KID documents. Thus mere inclusion</p>	<p>Standardisation would lead to optimisation of the market. In view of the same, an attempt has been made to provide for a model DTD which could be used as a foundation by the market participants for the individual DTDs. As mentioned in the proposal, commercial</p>	<p>It is proposed to amend Regulation 18(4) of NCS Regulations and Regulation 14 of the DT Regulations in order to enable SEBI to provide the formats for model DTDs. The model DTDs shall</p>	<p>CoBoSAC agreed with the revised proposal.</p> <p><u>Final proposal:</u></p> <p>No change</p>

	<p>b. Part B – comprising the representations and warranties.</p> <p>c. Part C – comprising all commercial terms such as coupon, security, tenure, etc.</p> <p>d. Part D – comprising exceptions/ deviations from Part A and Part B of model DTD.</p> <p>2. The model DTD specified as above may be deviated from, provided that a key summary sheet, capturing the deviations along with the rationale for the same, is provided by the issuer in the General Information Document (GID)/ Key Information Document (KID) or Shelf Prospectus, thereby preserving commercial flexibility and investor knowledge.</p>	<p>of the deviations in the GID and KID document will make the document more bulky in nature and it will not hold relevance for the debenture holders.</p>	<p>flexibility and investor knowledge is being preserved as the model DTD specified may be deviated from, provided that a key summary sheet, capturing the deviations along with the rationale for the same, is provided by the issuer in the offer document.</p>	<p>be specified by way of circular. The model DTD specified by way of circulars may be deviated from, provided that a key summary sheet, capturing the deviations along with the rationale for the same, is provided by the issuer</p>	
	<p>3. Accordingly, Regulation 18(4) of NCS Regulations and Regulation 14 of the DT Regulations may be amended to read as under:</p>	<p>The commercial intent between the parties for each of the issuances varies. Consequently, deviations are generally because of the commercial intent as</p>	<p>The comment w.r.t bulkiness of GID/ KID has merit. A pointwise mapping of the of</p>	<p>along with the rationale for the same, is provided by the issuer</p>	

	<p>“Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as specified in section 71 of Companies Act, 2013, Form No.SH.12 specified under the Companies (Share Capital and Debentures) Rules, 2014 and as specified by SEBI from time to time.”</p> <p>Rationale: While Regulation 18(4) of NCS Regulations and Regulation 14 of DT regulations specify the broader principles of DTD, it does not prescribe any standard draft of DTD to be adopted by the issuers. In view of the above, the DTDs have been observed to have very different contractual terms and approaches towards documentation that varies from issuance to issuance.</p>	<p>mutually agreed between the parties viz. Issuer DT and the Investor. Further as the intent is the standard model can be deviated thus a disclosure to that effect should be sufficient. Further, debenture holders may can have access to the DTD for their reference and also important clauses w.r.t the security cover and events of default are already forming part of the GID and KID documents. Thus mere inclusion of the deviations in the GID and KID document will make the document more bulky in nature and it will not hold relevance for the debenture holders.</p>	<p>the provisions of the model DTD with the corresponding provisions of the applicable regulations shall be done prior to the issuance of the final model DTDs.</p>	<p>in the General Information Document (GID)/ Key Information Document (KID) or Shelf Prospectus.</p>	
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Annexure – B

Draft Notification (NCS Regulations, LoDR Regulations and DT Regulations)

Amendment shall be notified after following the due process

Annexure – C

Draft Circular

Circular shall be issued after following the due process

Annexure – D

Draft Circular

Circular shall be issued after following the due process