

Measures for regulation of activities of Debenture Trustee including measures for Ease of Doing Business

1. Objective:

1.1. This Board Memorandum proposes amendments to the SEBI (Debenture Trustees) Regulations, 1993 (DT Regulations), to introduce measures for regulation of activities of Debenture Trustees (DTs).

1.2. This Board Memorandum also proposes to submit proposals at Para 5.3, Para 6.3, Para 7.3 and Para 8.3 which were placed before the SEBI Board in its meeting dated December 18, 2024, vide Board Memorandum (enclosed as **Annex - A**). The said Memorandum proposed amendments to the DT Regulations, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) and the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations), to introduce measures for Ease of Doing Business (EODB) for DTs.

1.3. This Board Memorandum also proposes to give effect to measures for EODB for DTs by way of issuance of circular(s).

2. Background:

2.1. In order to introduce measures for reforms to the DT Regulations including towards EoDB, SEBI Board in its meeting held on December 18, 2024, deliberated on the proposals placed before it (vide Board Memorandum). The proposals, inter-alia, covered the following:

2.1.1. Specifying Activity Based Regulation for DTs (paragraph 4 of Annex - A);

2.1.2. Definition of “cross-default” and aggregation of debenture holders across ISINs for voting and decisions in case of shared security interests (paragraph 5 of Annex - A);

2.1.3. 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 (paragraph 6 of Annex - A);

2.1.4. Modifications to the manner of utilization of REF (paragraph 7 of Annex - A);
and

2.1.5. Standardization of Debenture Trust Deed (DTD) (paragraph 8 of Annex - A).

2.2. The Board considered and approved the proposals in the said Memorandum with certain modifications in respect of the proposal on Specifying Activity Based Regulation for DT. While the proposals approved by the Board were under process of implementation, on a further internal review and feedback received on the draft Minutes, it was felt that the proposal regarding activity based regulation needs to be reconsidered. Accordingly, vide Board Memorandum (enclosed as **Annex – B**), it was proposed that post internal review, the proposal either revised or as deemed appropriate and necessary or the deferred proposal will be placed afresh for Board’s review and approval. The Board in its meeting held on March 24, 2025, accorded approval to defer the implementation of the proposals.

2.3. In light of the above, this Memorandum shall discuss in detail the revised proposal, “Specifying Activity Based Regulation for DTs”, along with the draft amendment thereof, in the subsequent paragraphs.

2.4. For all other proposals, as mentioned at paragraphs 2.1.2 to 2.1.5 above, the draft amendments will be taken up as proposed in the Board Memorandum placed before the Board in its meeting dated December 18, 2024.

3. Specifying Activity Based Regulation for DTs:

Original proposal and decisions at Board meeting of December 18, 2024:

3.1. 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 (or such other activities as specified or permitted by the Board).

3.2. The DTs, which are a regulated entity under purview of Financial Sector Regulator (FSR)/ Authority (other than SEBI), may continue to carry out activities under the purview of such FSR/ Authority under the guidelines of the FSR/ Authority as may be specified from time to time. 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.

3.3. 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. In course of Board deliberations in its meeting held on December 18, 2024, it was decided that hiving off to a separate legal entity could be within a period of

2 years from the date of notification. Further, that the hived-off legal entity shall not use the brand or corporate name of the regulated entity beyond the aforesaid period of 2 years. In the interim period, until hiving off of such activities, the DTs while undertaking activities not regulated by SEBI, shall explicitly disclose that such activities are not under the purview of SEBI. DTs which have to hive off activities and the hived-off entity when using the same brand name up to the permitted period, would need to abide by such code of conduct as SEBI may specify from time to time. The regulated entity, undertaking DT activities, may share resources (people, infrastructure, IT, safekeeping facilities, etc.) with the hived-off entity, while segregating legal liability.

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

Analysis of market feedback and rationale for reconsideration (post the Board meeting on March 24, 2025 and its decision):

3.5. Discussions were held with certain registered DTs and feedback was sought from the industry associations, viz. Trustees Association of India (TAI) and United Trustee Association of India (UTAI), on the key concerns in hiving off and alternative mechanisms to deal with the concerns/ possible risks associated with unregulated activities being carried out by a SEBI registered entity.

Revised proposal:

3.6. Pursuant to inputs received from market participants and due internal discussions and deliberations, it is now proposed that a registered DT need not be required to hive-off the non-SEBI regulated activities, in a separate legal entity.

3.7. A DT may be permitted to undertake activities that are not regulated by SEBI, subject to the following conditions:

- 3.7.1. DT may undertake activities, which fall under the purview of any other Financial Sector Regulator (FSR), provided it shall comply with the regulatory framework, if any, as may be specified by the respective FSR for the matters relating to policy, eligibility criteria, risk management, investor grievance or dispute handling mechanism, inspection, enforcement and claims;

“Financial Sector Regulator” shall mean an authority or body constituted under any law for the time being in force to regulate services or transactions in the financial sector and includes the Reserve Bank of India (RBI), Insurance and Regulatory Development Authority (IRDA), Pension Funds Regulatory and Development Authority (PFRDA), International Financial Services Centres Authority (IFSCA), Ministry of Corporate Affairs (MCA), Insolvency and Bankruptcy Board of India (IBBI) or such other Authority as may be specified by the Board, from time to time.

- 3.7.2. DT may also undertake those activities, which do not fall under the purview of SEBI or any other FSR, provided they are fee-based, non-fund based activities, and pertaining to financial services sector.
- 3.7.3. DT shall undertake such activity(ies) that are not regulated by SEBI only at arms’ length basis through one or more Separate Business Unit (SBU) of the DT, segregated by a Chinese Wall and ring-fenced from the SEBI regulated activities.
- 3.7.4. DT shall ensure that it transfers its activities not regulated by the Board, to separate business unit(s), within a period of six months from the date of the amendment notification, or such extended period that the Board may specify, by way of a circular.

- 3.7.5. DT shall ensure that the grievance redressal mechanism including escalation mechanism, if any, with respect to activities not regulated by SEBI, is separate and distinct from the grievance redressal mechanism provided for activities regulated by SEBI and is part of the SBU.
- 3.7.6. DT shall prepare and maintain separate records in the SBU, for the non-SEBI regulated activities. Further, the staff engaged in such activities, should be distinct from the staff handling activities regulated by SEBI. However, the staff can cross the Chinese Wall, subject to due procedures approved by the board of directors of the DT. Such Chinese Wall shall not be applicable for the key managerial personnel.
- 3.7.7. The other resources including the information technology infrastructure may be shared between the activities regulated by the Board and activities that are not regulated by the Board subject to due procedures approved by the board of directors of the DT.
- 3.7.8. The minimum net worth requirement of a DT specified under the DT Regulations, shall be ring fenced from any impact arising out of undertaking the activities that are not regulated by SEBI.

The DT shall duly disclose on its website, the list of the activities that are not SEBI regulated, along with a disclosure that none of the SEBI investor protection mechanism will be available for any grievances or disputes arising out of or pertaining to such activities. A DT undertaking such activity(ies), as on the date of the amendment notification, shall make the said disclosure on its website, within thirty days from the date of the amendment notification.

3.7.9. DT shall ensure that its advertising or marketing material and its webpage displaying information pertaining to non-SEBI regulated activities, shall be separate and distinct from regulated activities.

3.7.10. Before undertaking any activities which are not regulated by SEBI, there shall be an upfront written disclosure by the DT to the relevant stakeholders including clients, beneficiaries and counterparties. The said disclosure shall be made, on all engagement letters, contracts, agreements, and business communication that such activity(ies) do not fall within the regulatory purview of SEBI. In this regard, confirmation shall also be obtained from the stakeholders, at the time of engagement, that they have understood the nature of the activity, risks involved and non-availability of any SEBI investor protection mechanism.

Further, for the existing and ongoing arrangements w.r.t such activities, a DT shall make necessary disclosures and obtain necessary confirmation/acknowledgement from the stakeholders including clients, beneficiaries and counterparties, and submit a compliance report to the Board, within a period of six months from the date of amendment notification, or such extended period that the Board may specify, by way of a circular.

3.7.11. Every debenture trustee undertaking any activity not regulated by the Board shall ensure that, in respect of activities not regulated by the Board, it submits an undertaking as part of the half-yearly compliance report confirming compliance with the requirements of these regulations, duly reviewed and approved by its board of directors.

3.8. The aforementioned proposal has been discussed with the representatives of the industry associations, viz. TAI and UTAI and their feedback on certain items have been suitably incorporated. It is noted that the original proposal was duly

consulted and the current proposal relaxes the earlier requirement of hiving-off and aims to facilitate ease of doing business for the DTs. Accordingly, public consultation for the revised and final proposal has not been undertaken.

4. Proposal to the Board:

4.1. The Board is requested to:

4.1.1. consider and approve the proposals as detailed in paragraph 3.7 above;

4.1.2. approve the implementation of proposals w.r.t. paragraphs 5.3, 6.3, 7.3 and 8.3 in Board Memorandum (which were considered and approved by Board in its meeting held on December 18, 2024);

4.1.3. the consequent draft amendment notifications to the NCS Regulations, LODR Regulations and DT Regulations, placed at **Annex - C** and draft circulars placed at **Annex – D**; and

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

Annexure A

https://www.sebi.gov.in/sebi_data/meetingfiles/dec-2024/1735215396986_1.pdf

(This has been excised for reasons of confidentiality.)

Annexure C

(This has been excised for reasons of confidentiality.)

Annexure D

(This has been excised for reasons of confidentiality.)