



CONSULTATIVE PAPER

on the proposed amendments to SEBI (Debenture Trustee) Regulations, 1993

A. Background

1. SEBI had set up a Task Force comprising of SEBI officials and representative of Debenture Trustees (DTs) for examining the "Challenges in performing the obligations and duties as Debenture Trustees to protect the interests of the debenture holders". The task force discussed the amendments to be made in the DT Regulations to harmonise the existing provisions with that of the Companies Act 2013, to fortify the existing provisions to enable the debenture trustees to perform the task of securing the interest of the investors and consequential changes. The Task Force has submitted its recommendations which, inter alia, include proposal regarding amendments to DT Regulations which can be classified in three broad issues:

S.N.	Details of Amendments
1.	Amendments required in SEBI (Debenture Trustee Regulations), 1993 in the light of the changes in the Companies Act 2013, (Share Capital and Debentures) Rules 2014 etc.
2.	Changes on account of amendment in other regulations i.e SEBI (Substantial Acquisition of Shares and Takeovers) Regulations) 2011, etc.
3.	Consequential changes for improvement

B. Need for Review

2. It is observed that several existing provisions in the DT Regulations had reference to the Companies Act, 1956 which have been repealed and replaced by the Companies Act, 2013. Therefore, such provisions in the DT Regulations require to be amended to synchronise them with the corresponding provisions in the Companies Act, 2013.
3. It is felt that several existing provisions in the DT Regulations require changes/ modifications/ improvements to enable the debenture trustees to perform the task of securing the interest of the investors more effectively.
4. It is felt that the provisions regarding liability for action against Debenture Trustees with regard to default/ non-compliance require to be modified to streamline them with other SEBI Regulations so as to have consistency.

C. Proposal

5. The Task Force has submitted its recommendations which, inter alia, include proposal regarding amendments to the DT Regulations. The proposed amendments to the DT Regulations along with the rationale for the same is placed as under:

- 5.1 **Amendments required in SEBI (Debenture Trustee Regulations), 1993 in the light of the changes in the Companies Act 2013, Companies (Share Capital and Debentures) Rules 2014 etc.-** For the purpose of harmonization in the provisions given

in DT Regulations with those given in the Companies Act 2013, it is proposed that amendments may be made in the following existing provisions in the DT Regulations:

- a) Provisions relating to definition of 'associate', 'debenture' and 'principal officer'.
- b) Provisions relating to agreement between DT and the issuer.
- c) Provisions relating to appointment as debenture trustee.
- d) Provisions relating to the contents of the Trust Deed.
- e) Provisions relating to the Board's right to inspect and disciplinary proceedings.

Details as regards the existing provisions in the DT Regulations, proposed amendments and the rationale are placed at the Annexure-1 to this Consultative Paper.

5.2 Changes on account amendment of the other regulations i.e SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, etc. - For the purpose of harmonization in the provisions given in DT Regulations with those given in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations – (SAST) 2011,etc.,it is proposed that amendments may be made in the following existing provisions in the DT Regulations:

- a) Provision relating to definition of 'change in control'.
- b) Provision relating to definition of 'insurance company'

Details as regards the existing provisions in the DT Regulations, proposed amendments and the rationale are placed at the Annexure-2 to this Consultative Paper.

5.3 Consequential changes for improvement - For the purpose of streamlining the provisions regarding liability for action against Debenture Trustees with regard to default/ non-compliance, it is proposed that amendments may be made in the following existing provisions in the DT Regulations:

- a) Provision relating to definition of 'body corporate', 'debenture trustee'. and 'issue'.
- b) Introducing provision relating to definition of 'Recognised Stock Exchange' and certification requirement of the Compliance Officer.
- c) Provisions relating to the duties of the debenture trustees.
- d) Provisions relating to end-utilisation certificate from the issuer's auditors.
- e) Provisions relating to maintenance of books of account, records and documents, by the debenture trustee.
- f) Provisions relating to the liabilities for actions in case of default.

Details as regards the existing provisions in the DT Regulations, proposed amendments and the rationale are placed at the Annexure-3 to this Consultative Paper.

D. Public Comments

6. In light of the above, public comments are invited on the proposals contained in the Annexure - 1, 2 and 3 to this Consultative Paper. Comments/ suggestions may be provided as below:

Name of entity / person / intermediary/ Organization:			
Sr. No.	Pertains to serial number in Annexure - 1, 2 and 3	Suggestion (s)	Rationale

7. Comments may be forwarded by email to dt@sebi.gov.in or jalits@sebi.gov.in or may be sent by post to the following address latest by March 08, 2017.

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Annexure - 1

Amendments required in SEBI (Debenture Trustee Regulations), 1993 in the light of the changes in the Companies Act 2013, Companies (Share Capital and Debentures) Rules 2014 etc.

Proposed Amendments to SEBI (Debenture Trustees) Regulations, 1993 (DT Regulations)

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
1.	<p><u>Definition : 2(aa)</u></p> <p>2(aa) “associate” in relation to a debenture trustee, or body corporate shall include a person,—</p> <p>(i) who, directly or indirectly, by himself, or in combination with relatives, exercises control over the debenture trustee or the body corporate, as the case may be, or</p> <p>(ii) in respect of whom the debenture trustee or the body corporate, as the case may be, directly or indirectly, by itself, or in combination with other persons, exercises control, or</p> <p>(iii) whose director, is also a director, of the debenture trustee or the body corporate, as the case may be.</p> <p>Explanation: For the purpose of this regulation, the expression “control” shall have the same meaning as defined under clause (c) of Regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;</p>	<p>2(aa)“associate” shall mean any entity which is an associate under sub-section (6) of section 2 of the Companies Act, 2013</p>	<p>The definition of associate given in the SEBI (DT) Regulations is proposed to be harmonized with the definition as mentioned in the Companies Act, 2013.</p> <p>As per Section 2(6) of the Companies Act, 2013: "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.</p> <p>Explanation - For the purposes of this clause, "significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement;</p> <p>Therefore, it is proposed that the definition of associate as given in Regulation 2(aa) may be replaced with the definition given in the Companies Act, 2013.</p> <p>In the earlier definition control was defined as right to appoint majority directors. However, as per new definition ‘significant control’ is defined as ‘control of at least twenty per cent of total share capital, or of business decisions under an agreement’.</p>
2.	<p><u>Definition : 2(b)</u></p>	<p>2(b) “Companies Act” means the Companies Act,</p>	<p>The Companies Act, 1956 has been replaced with the</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
	2(b) "Companies Act" means the Companies Act, 1956 (1 of 1956);	2013 (Act 18 of 2013);	Companies Act, 2013. Hence it is proposed that Regulation 2(b) of the SEBI (DT) Regulations may be replaced as stated.
3.	Definition : 2(ba) 2(ba) "debenture" means a debenture within the meaning of sub-section (12) of section 2 of the Companies Act, 1956 (1 of 1956)	"debenture" means a debenture within the meaning of sub-section (30) of section 2 of the Companies Act, 2013.	The Companies Act, 1956 has been replaced with Companies Act, 2013. The definition of debenture remains same. As per Section 2(30) of the Companies Act, 2013: "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. Hence, it is proposed that Regulation 2(ba) of SEBI (DT) Regulations may be replaced as stated.
4.	Definition : 2(f) 2(f) "principal officer" means,— (i) a secretary, manager or director of the body corporate; or (ii) any person connected with the management or administration of the body corporate upon whom the Board has served notice of its intention of treating him as the principal officer thereof;	"principal officer" means,— A KMP as defined under sub section (51) of section 2 of the Companies Act, 2013	To oversee the activities of the DT, a senior level official shall be entrusted with the position of the Principal Officer. Therefore, it is proposed to replace the definition of a principal officer to include KMP as defined in the Companies Act 2013. As per the Section 2(51) of the Companies Act 2013: "key managerial personnel", in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed Therefore, it is proposed that Regulation 2(f) of SEBI (DT)

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			regulations may be replaced as stated.
5.	<p><u>Regulation : 7</u></p> <p>Eligibility for being debenture trustee.</p> <p>7. No person shall be entitled to act as a debenture trustee unless he is either—</p> <p>(a) a scheduled bank carrying on commercial activity; or</p> <p>(b) a public financial institution within the meaning of section 4A of the Companies Act, 1956; or</p> <p>(c) an insurance company; or</p> <p>(d) body corporate.</p>	<p>Eligibility for being debenture trustee.</p> <p>7. No person shall be entitled to act as a debenture trustee unless it is :—</p> <p>(a) a scheduled bank carrying on commercial activity; or</p> <p>(b) a public financial institution within the meaning of section 2(72) of the Companies Act, 2013; or</p> <p>(c) an insurance company; or</p> <p>(d) body corporate as defined under the Companies Act, 2013</p>	<p>To change the reference regarding Companies Act to the new Companies Act, 2013.</p> <p>Therefore, it is proposed that the Regulation 7 of the SEBI (DT) Regulations may be replaced as stated.</p>
6.	<p><u>Regulation : 13(b)</u></p> <p>Obligation before appointment as debenture trustees.</p> <p>13. No debenture trustee who has been granted a certificate under regulation 8 shall act as such in respect of each issue of debenture unless—</p> <p>(a)</p> <p>(b) the agreement under clause (a) shall inter alia contain:</p> <p>(i) that the debenture trustee has agreed to act as such under the trust deed for securing an issue of debentures for the body corporate;</p> <p>(ii) the time limit within which the security for the debentures shall be created.</p>	<p>Obligation before appointment as debenture trustees.</p> <p>13. No debenture trustee who has been granted a certificate under regulation 8 shall act as such in respect of each issue of debenture unless—</p> <p>(a)</p> <p>(b) the agreement under clause (a) shall inter alia contain:</p> <p>(i) an undertaking by the body corporate to comply with all regulations / provisions of Companies Act, 2013, guidelines of other regulatory authorities in respect of allotment of debentures till redemption;</p> <p>(ii) the time limit within which the security for the debentures shall be created or the agreement shall</p>	<p>As per Companies Act, 2013 and also other SEBI Regulations, issuer company has to comply with various provisions even before allotment of debentures. A clause regarding an undertaking by the debt issuer companies to comply with the Companies Act 2013 may be incorporated as DTs have expressed difficulty in impressing upon the issuer companies regarding various provisions prescribed by the regulatory authorities.</p> <p>Therefore, it is proposed to amend Regulation 13(b) (i) and (ii) as stated.</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
		be executed in accordance with the Companies Act, 2013 or provisions as prescribed by any regulatory authority as applicable.	
7.	<p>Regulation : 13A(a)</p> <p>13A Debenture Trustee not to act for an associate. No debenture trustee shall act as such for any issue of debentures in case— (a) it is an associate of the body corporate, or</p>	<p>13A A person shall not be appointed as a debenture trustee, if he</p> <p>(a) (i) beneficially holds shares in the company;</p> <p>(ii) is a promoter, director or KMP or any other officer or an employee of the company or its holding, subsidiary or associate company;</p> <p>(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;</p> <p>(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;</p> <p>(v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;</p>	<p>As per clause 18(2)(c) Companies (Share Capital and Debentures) Rules, 2014 various prohibitions are mentioned from acting as a debenture trustee. The same may be incorporated in the DT Regulations too. Therefore, it is proposed to modify the Regulation 13A(a) of the SEBI (DT) Regulations to incorporate the requirements of the clause 18(2) (c) of Companies (Share Capital and Debentures) Rules, 2014 various as stated.</p> <p>Further, it is also proposed that wherever, government provides guarantees for the debentures issued, the proposed prohibition to act as DT may not be applicable.</p> <p>As per the Section 18(2)(c) of the Companies Act 2013:</p> <p>A person shall not be appointed as a debenture trustee, if he-</p> <p>(i) beneficially holds shares in the company;</p> <p>(ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;</p> <p>(iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
		<p>(vi) has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or Rs.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;</p> <p>(vii) is relative of any promoter or any person who is in the employment of the company as a director or KMP.</p> <p>Provided that this requirement shall not be applicable in respect of debentures issued:</p> <p>(i) wherever there is guarantee by the state / central government for the debentures issued</p>	<p>(iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;</p> <p>(v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;</p> <p>(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;</p> <p>(vii) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel</p> <p>Therefore, it is proposed that the sub-clause (a) to Regulation 13A may be replaced as stated.</p>
8.	<p><u>Regulation : 14</u></p> <p>Obligation of the debenture trustees.</p> <p>14. Every debenture trustee shall amongst other matters accept the trust deeds which contain the matters specified in Schedule IV to the regulations</p>	<p>Obligation of the debenture trustees.</p> <p>14. 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 and Debentures) Rules, 2014 .</p>	<p>The Companies Act 2013 prescribe the contents of Trust Deed. Hence, to align with Companies Act, 2013 it is proposed that the contents of the trust deed to be maintained by debenture trustee may be in terms of the Companies Act, 2013 as it is more exhaustive.</p> <p>Therefore, it is proposed that Regulation 14 of the SEBI (DT) Regulations may be harmonized in terms of the Companies Act 2013.</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
			Further in view of the above modification the Schedule IV (which specifies the contents of trust deed) to DT Regulations shall be deleted.
9.	<p><u>Regulation : 19(2)(b)</u></p> <p>Board's right to inspect. 19. (1) (2) The purposes referred to in sub-regulation (1) shall be as follows, namely:— (a) (b) that the provisions of the Companies Act, 1956, Circulars, rules and regulations are being complied with; (c)</p>	<p>Board's right to inspect. 19. (1) (2) The purposes referred to in sub-regulation (1) shall be as follows, namely:— (a) (b) that the provisions of the Companies Act, 2013, Circulars, rules and regulations are being complied with; (c)</p>	<p>To change the reference regarding Companies Act to the new Companies Act, 2013.</p> <p>Therefore, Regulation 19(2)(b) may be replaced as stated.</p>

Annexure - 2

Changes on account of amendment in other regulations i.e. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, etc.

Proposed Amendments to SEBI (Debenture Trustees) Regulations, 1993 (DT Regulations)

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
1.	<p><u>Definition : 2(ae) (i)</u></p> <p>2(ae) "change in control", in relation to a debenture trustee, means :—</p> <p>(i) if its shares are listed on any recognised stock exchange, change in control within the meaning of regulation 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;</p> <p>(ii)</p>	<p>2(ae) "change in control", in relation to a debenture trustee, means :—</p> <p>(i) if its shares are listed on any recognised stock exchange, change in control as per the provisions of Regulation 4 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;</p> <p>(ii)</p>	<p>The SEBI ((Substantial Acquisition of Shares & Takeovers) Regulations, 1997 has been repealed and substituted with SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011. Hence, for harmonization, it is proposed to replace the definition of "change in control" in terms of the SEBI (SAST) Regulations, 2011.</p> <p>Therefore, it is proposed that Regulation 2(ae) (i) of the SEBI (DT) Regulations may be replaced as stated.</p>
2.	<p><u>Definition : 2(e)</u></p> <p>2(e) "insurance company" means a company as defined in clause (21) of section 2 of the Companies Act;</p>	<p>2(e) "insurance company" has the same meaning assigned to it under section 2(7A) of the Insurance Act, 1938</p>	<p>It is proposed to replace the definition of insurance company as mentioned in the Insurance Act, 1938 as no corresponding definition is present in the Companies Act, 2013</p>

Annexure - 3

Consequential changes for improvement

Proposed Amendments to SEBI (Debenture Trustees) Regulations, 1993 (DT Regulations)

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
1.	<u>Definition : 2(ab)</u> 2(ab) "body corporate" shall have the meaning assigned to it in or under clause (7) of section 2 of the Companies Act, 1956 (1 of 1956);	2(ab) 'body Corporate' shall have the meaning assigned to it in or under Clause (11) of Section 2 of the Companies Act, 2013 (18 Of 2013) and for the purpose of these Regulations, includes a Public Financial Institution as defined under Section 2(72) of Companies Act, 2013, a Non Banking Financial Company, Public Sector Undertaking established under any Central or State enactment which has its debt securities listed or which seeks to list its debt securities on a recognized stock exchange in accordance with Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.	<p>The term 'body corporate' as provided in the SEBI (DT) Regulations is being harmonized with the definition in Companies Act, 2013.</p> <p>Further, it is also proposed to include government bodies, Public Financial Institutions as defined under Section 2(72) of the Companies Act, 2013, NBFCs, Public Sector Undertakings established under any Central or State enactment which has its debt securities listed or which seek to list its debt securities on a recognized stock exchanges.</p> <p>As per Clause 11 of Section 2 of the Companies Act, 2013:</p> <p>"body corporate" or "corporation" includes a company incorporated outside India, but does not include-</p> <p>(i) a co-operative society registered under any law relating to co-operative societies; and</p> <p>(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;</p> <p>Therefore, it is proposed to modify the definition of body corporate as stated.</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
2.	<p><u>Definition : 2(bb)</u></p> <p>2(bb) "debenture trustee" means a trustee of a trust deed for securing any issue of debentures of a body corporate;</p>	<p>2(bb) "debenture trustee" means a trustee appointed in respect of any issue of debentures of a body corporate.</p>	<p>The existing definition of 'debenture trustee' defines it as 'a trustee of trust deed for securing any issue of debentures'.</p> <p>However, in case of unsecured debentures, no security is offered by issuer company. Thus, in the trust deed executed by appointing the trustee, no security is created.</p> <p>Therefore, as no security is created in case of unsecured issues, the reference regarding "trust deed for securing any issue" in the definition of debenture trustee may not be appropriate.</p> <p>Therefore, it is proposed Regulation 2(bb) may be replaced as stated.</p>
3.	<p><u>Definition : 2(ea)</u></p> <p>2(ea) "issue" means an offer of sale of securities by anybody corporate or by any other person or group of persons on its or their behalf, as the case may be, to the public, or the holders of securities of such body corporate or person or group of persons and includes a private placement of debentures made by a listed company, which are proposed to be listed;</p>	<p>2(ea) "issue" means an offer of debentures by a body corporate, to the public, or the holders of securities of such body corporate which seeks to list its debt securities on a recognized stock exchange.</p>	<p>The proposed amendment seeks to clarify that debenture trustees shall be appointed by all body corporates which seek to list their debt securities on a recognized stock exchange.</p> <p>Therefore, it is proposed to replace the Regulation 2(ea) of the SEBI (DT) Regulations as stated.</p>
4.	-	<p>2(k) "Recognised Stock Exchange" shall have the same meaning assigned to it under sub-section (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;</p>	<p>Recognised stock exchange is currently not defined in the DT Regulations.</p> <p>Therefore, it is proposed to incorporate the definition of a Recognised Stock Exchange in the SEBI (DT) Regulations by adding a new clause as "2(k)"</p>
5.	-	<p>17A (4) The Compliance Officer so appointed shall obtain</p>	<p>As per SEBI notification dated March 11, 2013 issued under</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
		certification in terms of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 or as may be specified by the Board.	Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007, certification requirement has been mandated for the associated persons functioning as compliance officers of debenture trustees. Therefore, the same may be incorporated in the Regulations as stated by adding new sub-clause 4 to Regulation 17A .
6.	<p><u>Regulation : 15 (1)</u></p> <p>Duties of the debenture trustees.</p> <p>15. (1) It shall be the duty of every debenture trustee to-</p> <p>(a) call for periodical reports from the body corporate;</p> <p>(b) [deleted]</p> <p>(c) take possession of trust property in accordance with the provisions of the trust deed;</p> <p>(ca) supervise the implementation of the conditions regarding creation of security for the debentures and debenture redemption reserve, wherever applicable;</p> <p>(d) enforce security in the interest of the debenture holders;</p> <p>(e) do such acts as are necessary in the event the security becomes enforceable;</p> <p>(f) carry out such acts as are necessary for the protection of the debenture holders and to do all things necessary in order to resolve the grievances of the debenture holders;</p> <p>(g) ascertain and satisfy itself</p>	<p>Duties of the debenture trustees</p> <p>15. (1) It shall be the duty of every debenture trustee to-</p> <p>a. satisfy itself that the prospectus or letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;</p> <p>b. satisfy itself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;</p> <p>c. call for periodical status/ performance reports from the issuer company within 7 days of the relevant board meeting or within 45 days of the respective quarter whichever is earlier;</p> <p>d. communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;</p> <p>e. appoint a nominee director on the Board of the company in the event of:</p> <p>(i) two consecutive defaults in payment of interest to the</p>	<p>The provisions of Reg. 15(1) of the SEBI (DT) Regulations are almost similar to the provisions of Section 71 of Companies Act, 2013 and Rule 18(3) of The Companies (Share Capital and Debentures) Rules, 2014.</p> <p>Hence, sub-regulation 15(1) (a) to (n) are similar to Companies Act, 2013. However, (o) (p) (q), (r)& (s) are added to the proposed regulations considering existing regulations i.e. 15(1) (c), (j), (g), (l)and (i), respectively, which are not included in the Companies Act, 2013.</p> <p>The issuer companies sometimes take the plea that certain data is required to be approved by the Board in their Board Meeting and they can submit the reports only after the Board Meeting. To ensure timely submission of data, definite time frame is needed to be mandated so that the point of time is crystallised for getting reports from the issuer companies.</p> <p>Further, new provision at point no. 't', is proposed to be incorporated, mandating the</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
	<p>that the—</p> <p>(i) in case where the allotment letter has been issued and debenture certificate is to be issued after registration of charge, the debenture certificates have been despatched by the body corporate to the debenture holders within 30 days of the registration of the charge with the Registrar of Companies;</p> <p>(ii) debenture certificates have been despatched to the debenture holders in accordance with the provisions of the Companies Act;</p> <p>(iii) interest warrants for interest due on the debentures have been despatched to the debenture holders on or before the due dates;</p> <p>(iv) debenture holders have been paid the monies due to them on the date of redemption of the debentures;</p> <p>(h) ensure on a continuous basis that the property charged to the debentures is available and adequate at all times to discharge the interest and principal amount payable in respect of the debentures and that such property is free from any other encumbrances save and except those which are specifically agreed to by the debenture trustee;]</p> <p>(i) exercise due diligence to ensure compliance by the</p>	<p>debenture holders; or</p> <p>(ii) default in creation of security for debentures; or</p> <p>(iii) default in redemption of debentures.</p> <p>f. ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;</p> <p>g. inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;</p> <p>h. ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve.</p> <p>i. ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders.</p> <p>j. do such acts as are necessary in the event the security becomes enforceable;</p> <p>k. call for reports on the utilization of funds raised by the issue of debentures.</p>	<p>DT to obtain certain certificates on quarterly and annual basis, in case where listed debt securities are secured by way of receivables/ book debts. These Certificates shall ensure the adequacy of the Receivables which are the substantial security given by NBFCs/HFCs etc.</p> <p>Therefore, for the purpose of harmonization with Companies Act, 2013, it is proposed to amend Regulation 15 (1) of SEBI (DT) Regulations as stated.</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
	<p>body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed;</p> <p>(j) to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice;</p> <p>(k) to ascertain that the debentures have been converted or redeemed in accordance with the provisions and conditions under which they are offered to the debenture holders;</p> <p>(l) inform the Board immediately of any breach of trust deed or provision of any law;</p> <p>(m) appoint a nominee director on the Board of the body corporate in the event of:</p> <p>(i) two consecutive defaults in payment of interest to the debenture holders; or</p> <p>(ii) default in creation of security for debentures; or</p> <p>(iii) default in redemption of debentures;</p> <p>(n) communicate to the debenture holders on half yearly basis the compliance of the terms of the issue by the body corporate, defaults, if any, in payment of interest or redemption of debentures and action taken therefor.</p>	<p>l. take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;</p> <p>m. ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;</p> <p>n. perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.</p> <p>o. take possession of trust property in accordance with the provisions of the trust deed;</p> <p>p. to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice;</p> <p>q. ascertain and satisfy itself that :</p> <p>(i) in case where the allotment letter has been issued and debenture certificate is to be issued after registration of charge, the debenture certificates have been despatched by the body corporate to the debenture holders within 30 days of the registration of the charge with the Registrar of Companies;</p> <p>(ii) debenture certificates have been despatched</p>	

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
		<p>to the debenture holders in accordance with the provisions of the Companies Act;</p> <p>(iii) interest warrants for interest due on the debentures have been despatched to the debenture holders on or before the due dates;</p> <p>(iv) debenture holders have been paid the monies due to them on the date of redemption of the debentures;</p> <p>r. inform the Board immediately of any breach of trust deed or provision of any law, which comes to the knowledge of the trustee</p> <p>Explanation: The communication to the debenture holders by the debenture trustee as mentioned in these regulations may be made by electronic media, press-release and placing notice on its website.</p> <p>s. exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed.</p> <p>t. In case where listed debt securities are secured by way of receivables/ book debts it shall obtain the following.</p> <p>i. On Quarterly basis.</p> <p>a) Certificate from the Director / Managing Director of the issuer</p>	

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
		<p>company certifying the value of the book debts / receivables.</p> <p>b) Certificate from an independent chartered accountant giving the value of book debts / receivables</p> <p>ii. On Yearly basis.</p> <p>a) Certificate from the statutory auditor giving the value of book debts / receivables.</p>	
7.	<p><u>Regulation : 15(1A)(c)</u></p> <p>15(1A) The debenture trustee shall:</p> <p>(a)</p> <p>(b)</p> <p>(c) obtain a certificate from the issuer's auditors:</p> <p>(i) in respect of utilisation of funds during the implementation period of the project; and</p> <p>(ii) in the case of debentures issued for financing working capital, at the end of each accounting year.</p>	<p>15(1A) The debenture trustee shall:</p> <p>(a)</p> <p>(b)</p> <p>(c) obtain a certificate from the issuer's Statutory Auditor:</p> <p>(i) in respect of utilisation of funds during the implementation period of the project; and</p> <p>(ii) in the case of debentures issued for financing working capital, at the end of each accounting year.</p>	<p>As the regulations talk about "Issuers' Auditor", the issuers insist on providing certificate from 'Internal Auditors' 'Concurrent Auditors', etc. and not Statutory Auditors. Since, the Statutory Auditor has fiduciary duties towards the Shareholders of the Company and they are in a better position to comment on the financial position of the Company, it is proposed to modify the clause to mandate the Debenture Trustees to obtain certificate of end-utilisation of issue proceeds from the Statutory Auditor of the issuer company.</p> <p>Therefore, Regulation 15(1A)(c) may be replaced as stated.</p>
8.	<p><u>Regulation : 17(1)</u></p> <p>Maintenance of books of account, records, documents, etc.</p> <p>17.(1) Subject to the provisions of any law every debenture trustee shall keep and maintain proper books of account, records and documents, relating to the trusteeship functions for a period of not less than five financial years preceding the</p>	<p>Maintenance of books of account, records, documents, etc.</p> <p>17.(1) Subject to the provisions of any law every debenture trustee shall keep and maintain proper books of account, records and documents, relating to the trusteeship functions for a period of not less than five financial years from the date of redemption of debentures.</p> <p>(2)</p>	<p>Since there may be investors' complaints/ grievances etc. regarding the payment of redemption amount, it is proposed that the books and records shall be maintained for a period of not less than five financial years from the date of redemption of debentures.</p> <p>Therefore, Regulation 17(1) may be replaced as stated.</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
	current financial year. (2)		
9.	<p><u>Regulation : 25</u></p> <p>Liability for action in case of default.</p> <p>25. A debenture trustee who—</p> <p>(a) fails to comply with any conditions subject to which certificate has been granted;</p> <p>(b) contravenes any of the provisions of the Act, rules or regulations;</p> <p>(c) contravenes the provisions of the Companies Act or the rules made thereunder, shall be dealt with in the manner provided under 51[Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008]</p>	<p>Liability for action in case of default.</p> <p>25. (1) A Debenture Trustee which-</p> <p>(a) fails to comply with any conditions subject to which certificate has been granted;</p> <p>(b) contravenes any of the provisions of the Act or these regulations;</p> <p>(c) contravenes the provisions of the Companies Act or the rules made there under;</p> <p>(d) fails to furnish any information relating to its activity as a Debenture Trustee as required by the Board;</p> <p>(e) furnishes to the Board information which is false or misleading in any material particular;</p> <p>(f) does not submit periodic returns or reports as required by the Board;</p> <p>(g) does not co-operate in any enquiry, inspection or investigation conducted by the Board;</p> <p>(h) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf;</p> <p>shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.</p> <p>(2) Sub-regulation (1) shall not prejudice the powers of the Board to issue directions or measures under sections 11,</p>	<p>Regulation 25 is proposed to be modified to streamline it with other SEBI Regulations so as to have consistency with regard to the liabilities for actions in case of default.</p> <p>Therefore, Regulation 25 is proposed to be replaced as stated.</p>

Sr. No.	Existing provision / Clause in the Regulation	Proposed amendment	Rationale
		11B, 11D, sub-section (3) of section 12 or section 24 or Chapter VIA of the Act or under any other law for the time being in force.	
