

## 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.	<p><b>Specifying Activity Based Regulation for DTs</b></p> <p><b>Proposal:</b></p> <p>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</p>	<p>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</p>	<p>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</p>	<p>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.</p>	<p>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>

	<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>	<p>demarcated for regulated or unregulated business or services.</p>	<p>complete the hiving off.</p>	<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><b><u>Final Proposal:</u></b> <b>Instead of examining entities on a case-to case basis for hiving off, it is proposed that the hived off legal entity shall be</b></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 &amp; 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>		

	<p>jurisdiction of the concerned financial sector regulator/ authority.</p> <p>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.</p> <p>3. Further, Trustees that do not propose to undertake SEBI-regulated activities need not seek registration with SEBI.</p>	<p>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.</p> <p>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</p> <p>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</p>	<p>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.</p> <p>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>	<p>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.</p> <p>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.</p>	<p><b>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.</b></p>
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	<p><b>Rationale:</b> 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><b>Inclusion of definition of “cross-default” and aggregation of debenture holders across ISINs for voting and decisions in case of shared security interests</b></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>

<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</p>	<p>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>	<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>	<p>debenture holders of outstanding issuances, we may accordingly align the proposal on these lines.</p>	<p>internally and accordingly, take the agenda forward</p> <p><b><u>Final proposal:</u></b></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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	<p>decision to be taken thereof.</p>	<p>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>	<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><b>Rationale:</b> 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>		<p>define cross-default explicitly in the regulations .</p>
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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>	<p>CoBoSAC broadly agreed with the proposal.</p>	<p><b>Insertion of provisions in DT Regulations specifying Rights of DTs exercisable to aid in performance of their fiduciary duties, obligations, roles &amp; responsibilities and corresponding obligations on the issuer under LODR Regulations to enable timely fulfilment of duties by DTs</b></p> <p>The proposal in respect of specifying rights of DTs, may be specified as under:</p> <p><b>“Rights of the DTs”</b></p> <p>(1) A debenture trustee may inspect books of account, records, and registers of the issuer and</p>	<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.</p>	<p>No Change</p>	<p>CoBoSAC agreed with the proposal.</p> <p><b><u>Final proposal:</u></b></p> <p><b>No change</b></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.”		<p>obligation may be mandated on the issuer by way of circular (placed at Annexure C) in order to bring clarity.</p> <p><b>Rationale:</b> In order to empower DTs to perform/ discharge their obligations and duties efficiently and in a timely manner.</p>			
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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	<p><b>Modifications to the utilization of REF</b></p> <p>1. Explicitly add the following to the list of expenses to be reimbursed from REF:</p>	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"> <li>• obtaining various consents from debenture holders,</li> <li>• voting process,</li> <li>• filing court applications,</li> <li>• legal fees,</li> <li>• expenses for asset recovery services</li> <li>• appointment of legal consultants in respect of enforcement/ legal proceedings in the event of default</li> </ul> <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><b><u>Final proposal:</u></b> <b>No change</b></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><b>Rationale:</b> 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><b>Standardisation of Debenture Trust Deed (DTD)</b></p> <p><b>Proposal:</b></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><b><u>Final proposal:</u></b> <b>No change</b></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>3. Accordingly, Regulation 18(4) of NCS Regulations and Regulation 14 of the DT Regulations may be amended to read as under:</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>The commercial intent between the parties for each of the issuances varies. Consequently, deviations are generally because of the commercial intent as</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>The comment w.r.t bulkiness of GID/ KID has merit. A pointwise mapping of the of</p>	<p><b>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</b></p>	
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	<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><b>Rationale:</b> 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><b>in the General Information Document (GID)/ Key Information Document (KID) or Shelf Prospectus.</b></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