

SEBI/HO/DDHS/POD1/P/CIR/2023/112

July 04, 2023

To,

Issuers who have listed and/ or propose to list debt securities; and

All Debenture Trustees registered with SEBI

Madam / Sir

Sub: Appointment of Director nominated by the Debenture Trustee on boards of issuers

1. Regulation 23(6) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) obligates an issuer which is a company under the Companies Act, 2013 to ensure that its Articles of Association requires its Board of Directors to appoint as director, the person nominated by the debenture trustee(s) in terms of clause (e) of sub-regulation (1) of regulation 15 of the SEBI (Debenture Trustees) Regulations, 1993¹.
2. While this obligation exists for issuers that are companies under the Companies Act, 2013, there is no similar obligation for issuers that are not companies. In this regard, representations have been received from Debenture Trustees. A gist of the representations, as follows, merit attention:
 - 2.1. Issuers that are incorporated under different statutes / are also under the purview of other regulators have expressed inability to execute such amendments as the composition of their boards is governed by certain statutes which do not provide for appointment of nominee directors by Trustees.
 - 2.2. Appointment of any director on the boards of certain issuers which are governed by certain statutes requires prior approval of the President of India.

¹ Regulation 15(1)(e) of SEBI (Debenture Trustees) Regulations, 1993 requires the debenture trustees to appoint a nominee director on the Board of the company in the event of:
(i) two consecutive defaults in payment of interest to the debenture holders; or
(ii) default in creation of security for debentures; or
(iii) default in redemption of debentures.

- 2.3. Certain issuers are unable to appoint Nominee Directors on their boards as their principal document / charter does not provide for the same; in a few cases, the absence of a statutory mandate fetters them from amending their principal document.
3. The appointment of a director including nominee director is driven by the provisions of the principal document of the entity (Articles of association, in case of companies under the Companies Act, 2013). A nominee director is a director, and therefore, except for specific provisions of law, articles or the terms of the agreement under which the right of nomination comes, the position, appointment process, responsibilities, etc., of the nominee director are the same as that of any other director on the Board.
4. Accordingly, owing to the issues mentioned in para 2 and similarities in roles and responsibilities of the directors as mentioned in para 3, issuers that fall in any of the categories mentioned in 2.1, 2.2 or 2.3 above shall submit an undertaking to their Debenture Trustees that in case of events as mentioned in Regulation 15(1)(e) of SEBI (Debenture Trustees) Regulations, 1993, a non-executive / independent director / trustee / member of its governing body shall be designated as nominee director for the purposes of Regulation 23(6) of NCS Regulations, in consultation with the Debenture Trustee, or, in case of multiple Debenture Trustees, in consultation with all the Debenture Trustees.
5. Debenture Trustees shall:
- 5.1. ensure compliance with the provisions of this circular; and
- 5.2. monitor and ensure compliance by issuers, with the provisions of this circular.
6. The circular shall come into force with immediate effect.
7. Provisions of this circular shall be appropriately incorporated in the NCS Operational Circular dated August 10, 2021 and the DT Operational Circular dated March 31, 2023.
8. This circular is issued in exercise of the powers conferred upon SEBI under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 2A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 and regulations 55 and 56 of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 to protect the

interest of investors in securities and to promote the development of, and to regulate, the securities market.

9. This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Circulars”.

Yours faithfully,

Pradeep Ramakrishnan
General Manager
Department of Debt and Hybrid Securities
Email: pradeepr@sebi.gov.in
Phone no. 022-26449246