

SEBI/HO/MIRSD/CRADT/CIR/P/2020/203

October 13, 2020

To,

**All Issuers who have listed their debt securities or
propose to list their debt securities
All Debenture Trustees (DTs) registered with SEBI**

Dear Sir/ Madam,

**Sub: Standardisation of procedure to be followed by Debenture Trustee(s) in case of
'Default' by Issuers of listed debt securities**

1. Representations were made by Debenture Trustee(s) regarding the process to be followed in case of 'Default' by issuers of listed debt securities. After consultation with stakeholders including investors, Debenture Trustee(s), Issuers etc., procedures to be followed by the Debenture Trustee(s) in case of 'Default' by issuers of listed debt securities has been decided. This circular prescribes the process to be followed by the Debenture Trustee(s) in case of 'Default' by issuers of listed debt securities including seeking consent from the investors for enforcement of security and/or entering into an Inter-Creditor Agreement ("ICA").

A. Event of default

2. Regulation 51 read with the Explanation to Clause A (11) in Part B of Schedule III of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015 ("LODR Regulations") defines 'default' as non-payment of interest or principal amount in full on the pre-agreed date which shall be recognized at the first instance of delay in the servicing of any interest or principal on debt.
3. In the manner of calling 'event of default', due to the presence of multiple ISIN's which may have been issued under the same Information Memorandum(s) ("IM(s)") or a single ISIN which may have been split across multiple IM(s), 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 IMs.

B. Consent of investors for enforcement of security and for signing the ICA

4. The Reserve Bank of India (“RBI”), vide Circular dated June 07, 2019 issued the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 which *inter alia* specified the mechanism for resolution of stressed assets by Lenders (viz. Scheduled Commercial Banks, All-India Term Financial Institutions, Small Finance Banks, Systemically Important Non-Deposit Taking Non-Banking Finance Companies (NBFCs) as well as Deposit Taking NBFCs). In terms thereof, investors in debt securities, being financial creditors, are approached by other lenders to sign an agreement, referred to as the Inter Creditor Agreement (“ICA”), under specific terms detailed in the framework as stipulated by RBI.
5. Regulation 59 of LODR Regulations provides that material modification in the structure of debt securities shall be made only after obtaining the consent of the requisite majority of investors. Regulation 18 of the Securities and Exchange Board of India (Issuer and Listing of Debt Securities) Regulations, 2008 (“ILDS Regulations”), applicable in case of public issue of debt securities, stipulates a period of fifteen days for giving notice in case of roll-over of debt securities and further provides for approval to be obtained from not less than 75% of the holders by value of such debt securities.
6. As the resolution plan in the ICA may involve restructuring including roll-over of debt securities, requiring the consent of the investors, the process to be followed for seeking consent for enforcement of security and/or entering into an Inter-Creditor Agreement shall be as under:
 - 6.1. The Debenture Trustee(s) shall send a notice to the investors within 3 days of the event of default by registered post/acknowledgement due or speed post/acknowledgement due or courier or hand delivery with proof of delivery as also through email as a text or as an attachment to email with a notification including a read receipt, and proof of dispatch of such notice or email, shall be maintained.
 - 6.2. The notice shall contain the following:
 - 6.2.1. negative consent for proceeding with the enforcement of security;
 - 6.2.2. positive consent for signing the ICA;
 - 6.2.3. the time period within which the consent needs to be provided, viz. consent to be given within 15 days from the date of notice; and

6.2.4. the date of meeting to be convened,

6.3. Debenture Trustee(s) shall convene the meeting of all investors within 30 days of the event of default (as per para 6.1 above):

Provided that in case the default is cured between the date of notice and the date of meeting, then the convening of such a meeting may be dispensed with.

6.4. In view of Regulation 15(2)(b) of SEBI (Debenture Trustees) Regulations, 1993, in case of debt securities issued by way of public issue, the notice sent by the Debenture Trustee(s) in para 6.2 shall not contain the consent as per para 6.2.1 and the requirement to convene a meeting for enforcement of security, as per para 6.3, shall not be applicable.

6.5. The Debenture Trustee(s) shall take necessary action to enforce security or enter into the ICA or as decided in the meeting of investors, subject to the following:

6.5.1. In case(s) where the majority of investors expressed their dissent against enforcement of the security, the Debenture Trustee(s) shall not enforce security.

6.5.2. In case(s) where majority of investors expressed their consent to enter into ICA, the Debenture Trustee(s) shall enter into the ICA.

6.5.3. In case(s) consents are not received for enforcement of security and for signing ICA, Debenture Trustee(s) shall take further action, if any, as per the decision taken in the meeting of the investors.

6.5.4. The Debenture Trustee(s) may form a representative committee of the investors to participate in the ICA or to enforce the security or as may be decided in the meeting.

6.6. The consent of the majority of investors shall mean the approval of not less than 75% of the investors by value of the outstanding debt and 60% of the investors by number at the ISIN level.

C. Conditions for signing of ICA by Debenture Trustee(s) on behalf of investors

7. The Debenture Trustee(s) may sign the ICA and consider the resolution plan on behalf of the investors upon compliance with the following conditions:
 - 7.1. The signing of the ICA and agreeing to the resolution plan is in the interest of investors and in compliance with the Companies Act, 2013 and the rules made thereunder, the Securities Contracts (Regulations) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules, regulations and circulars issued thereunder from time to time.
 - 7.2. If the resolution plan imposes condition(s) on the Debenture Trustee(s) that are not in accordance with the provisions of Companies Act, 2013 and the rules made thereunder, the Securities Contracts (Regulations) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules, regulations and circulars issued thereunder from time to time, then the Debenture Trustee(s) shall be free to exit the ICA altogether with the same rights as if it had never signed the ICA. Under these circumstances, the resolution plan shall not be binding on the Debenture Trustee(s).
 - 7.3. The resolution plan shall be finalized within 180 days from the end of the review period. If the resolution plan is not finalized within 180 days from the end of the review period, then the Debenture Trustee(s) shall be free to exit the ICA altogether with the same rights as if it had never signed the ICA and the resolution plan shall not be binding on the Debenture Trustee(s). However, if the finalization of the resolution plan extends beyond 180 days, the Debenture Trustee(s) may consent to an extension beyond 180 days subject to the approval of the investors regarding the total timeline. The total timeline shall not exceed 365 days from the date of commencement of the review period.
 - 7.4. If any of the terms of the approved Resolution Plan are contravened by any of the signatories to the ICA, the Debenture Trustee(s) shall be free to exit the ICA and seek appropriate legal recourse or any other action as deemed fit in the interest of the investors.
8. The Debenture Trustee(s) shall ensure that the conditions mentioned in paragraphs 7.2, 7.3 and 7.4 are suitably incorporated in the ICA, before signing of the ICA.

9. 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, Regulation 31(1) of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 and Regulation 101(1) of the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.
10. The provisions of this circular shall come into force with immediate effect.
11. The circular is available on the SEBI Website at www.sebi.gov.in under the head “Legal Framework/Circulars”

Yours faithfully,

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