



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

Deputy General Manager
Market Intermediaries Regulations and Supervision Department – III

MIRSD-3/IG/MS/SS/23197/1/2016
August 19, 2016

BOI Merchant Bankers Ltd.
Star House 2, 1st Floor,
C4, 'G' Block, Bandra Kurla Complex
Bandra (East), Mumbai – 400051.

Dear Sir,

Sub: Request for "Interpretative letter" under SEBI (Informal Guidance) Scheme, 2003 and SEBI (Debenture Trustee) Regulations, 1993 on requirement of license to undertake security trustee business

1. Please refer to your letter dated May 26, 2016, June 06, 2016 and June 21, 2016 regarding the captioned request on requirement of license to undertake security trustee business.
2. In your aforesaid letters, you have inter alia represented as follows:-
 - i) BOI Merchant Bankers Limited (a wholly owned subsidiary of Bank of India) is a SEBI registered Category-I Merchant banker, with registration number INM000012201 dated January 21, 2015.
 - ii) You had submitted that you propose to undertake the below mentioned activities:-
 - a) Trusteeship business for banks/ financial institution for their credit business which essentially involves acting as Security Trustee for holding the securities over tangible/ intangible assets charged to the Lenders for Loans granted by them in syndicated/ securitization transaction. Such transactions may be under consortium/ multiple or sole banking arrangement.
 - b) To act as Share Trustee for holding share pledge on behalf of the Lenders, Escrow Trustee etc. and documentations for loans and advances of various centers.

You had further submitted that you do not propose to undertake Debenture Trustee business i.e. to act as trustee of a trust deed for securing any issue of debentures of a body corporate.

- iii) You had submitted that the following regulations may be applicable as per the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 ("Regulations"):-

"As per section 2 bb of the Regulations, debenture trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate.

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सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.
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Section 3 (1) of the Regulations provides that an application by a debenture trustee for grant of a certificate shall be made to the Board in Form A.

Section 7 of the Regulations specify the eligibility criterion for being debenture trustee and provides that no person shall be entitled to act as a debenture trustee unless he is either—

- (a) a scheduled bank carrying on commercial activity; or*
- (b) a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- (c) an insurance company; or*
- (d) body corporate."*

iv) You had also submitted that as per your interpretation of the abovementioned regulations "it is understood that, registration under the Regulations is only required if the applicant act /propose to act as trustee of a trust deed for securing any issue of debentures of a body corporate, however, since applicant propose to undertaking trusteeship business as mentioned above only, thus, the applicant may not require fresh/separate registration under the SEBI (Debenture Trustees) Regulations, 1993."

v) In view of the above, in accordance with the provisions of SEBI (Informal Guidance) Scheme, 2003, you had sought the guidance on following queries by way of interpretative letter in context of aforesaid provisions:-

- a. Whether only undertaking trusteeship business for banks/ financial institution for their credit business which essentially involves acting as Security Trustee for holding the securities over tangible/ intangible assets charged to the Lenders for Loans granted by them in syndicated/ securitization transaction or acting as Share Trustee for holding share pledge on behalf of the Lenders, Escrow Trustee etc. and documentations for loans and advances of various centers by category- 1 registered merchant banker i.e. BOI Merchant Bankers Ltd will require a separate registration under SEBI (Debenture Trustees) Regulations, 1993 or under any other SEBI Regulation or not ?
- b. If answer to above query is yes, then whether registration is required under SEBI (Debenture Trustees) Regulations, 1993 or under which other SEBI Regulation, if any.
- c. If answer to above query is yes, then whether BOI Merchant Bankers Ltd can apply for registration under SEBI (Debenture Trustees) Regulations, 1993 and hold both the registrations simultaneously i.e. Category- 1 Merchant Banker and Debenture Trustee ?

3. Our views on the issues mentioned at point number 2 (v) above are given as under:-

i) **Query 1 (mentioned at point no. 2 (v) (a) above):-**

With regard to your first query mentioned at point no. 2 (v) (a) above, the following provisions of SEBI (Debenture Trustees) Regulations, 1993 may be applicable:-



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As per regulation 2(bb) of SEBI (Debenture Trustees) Regulations, 1993, under definition, 'debenture trustee' means a trustee of a trust deed for securing any issue of debentures of a body corporate.

As per regulation 2(ba) of SEBI (Debenture Trustees) Regulations, 1993 under definition, 'debenture' means a debenture within the meaning of sub-section (12) of section 2 of the Companies Act, 1956.

Section 2(12) of the Companies Act, 1956 states that 'debenture' includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not.

The corresponding section 4(30) of the Companies Act, 2013 also states that the '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.

From the aforesaid provisions, it is inferred that the role of the debenture trustee is limited to issue of debentures, protecting interest of the debenture holders and matters incidental thereto, and same is regulated by SEBI (Debenture Trustees) Regulations, 1993. There is no express provision in the SEBI (Debenture Trustees) Regulations, 1993 regulating the activities of security trustee, share trustee and escrow trustee.

With regard to your query relating to regulating the activities of security trustee, share trustee and escrow trustee under any other SEBI regulations, it may be noted that your query is general and not interpretative. Therefore, we are not in a position to respond to the query in this regard.

ii) **Queries 2 and 3** (mentioned at point no. 2 (v) (b) and (c) above:-

In view of the response to query 1, the queries 2 and 3 becomes redundant.

4. The above position is based on the representation made to the Division in your letter under reference. Different facts or conditions might call for a different advice. This letter does not express the decision of the Board on the questions referred.
5. Please note that this position is only with respect to applicability of SEBI (Debenture Trustees) Regulations, 1993 and does not affect the applicability of any law and other SEBI Regulations, Guidelines and circulars administered by SEBI or any other authority.

Yours faithfully,

Medha Sonparote