

CACS Bulletin No.: 04/2023-24

Date of Issuance: July 15, 2023

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

PROVISION:

Regulation 23(6) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) obligates an Issuer Company to ensure that its Articles of Association have provisions to appoint 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, 1993 as a nominee Director in the following events:

- (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

EFFECTIVE DATE:

The amendment came into effect from the date of publication of Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2023 in official gazette i.e. February 02, 2023.

DUE DATE OF AMENDMENT IN ARTICLES OF ASSOCIATION:

The issuer companies are required to amend its Articles of Association by including the relevant provision to appoint the person nominated by the debenture trustee(s), on or before September 30, 2023.

APPLICABILITY:

SEBI has issued **Circular No. SEBI/HO/DDHS/POD1/P/CIR/2023/112** dated **July 04, 2023**, in relation to appointment of Director nominated by the Debenture Trustee on boards of issuers in certain situations/scenarios based on receipt of certain representations.

A gist of the representations is as under:

- 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.
- Issuers which are governed by certain statutes requires prior approval of the President of India.
- 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.

SEBI has clarified that, the issuers that fall in any of the categories mentioned above shall submit an undertaking to their Debenture Trustees that a non-executive/independent director/trustee/member of its governing body shall be designated as nominee director for the purposes of NCS Regulations, in consultation with the DTs, or, in case of multiple DTs, in consultation with all the DTs.

TIME LIMIT FOR APPOINTMENT OF DIRECTOR NOMINATED BY DEBENTURE TRUSTEE:

The issuer, which is in default of payment of interest or repayment of principal amount in respect of listed debt securities, shall appoint the person nominated by the debenture trustee(s) as a director on its Board of Directors, within one month from date of receipt of nomination from the debenture trustee.

Suggestions may be sent to rupesh@cacsindia.com

**Rupesh Agarwal | Managing Partner | Chandrasekaran Associates |
Company Secretaries 11-F, Pocket Four | Mayur Vihar Phase One |
Delhi - 110 091 | Tel. +91-11-2271 0514
rupesh@cacsindia.com | info@cacsindia.com | www.cacsindia.com**

DISCLAIMER

CACS Bulletin is not intended as a source of advertising or solicitation and the contents of the same should not be construed as professional / legal advice. Readers should take specific advice from a qualified professional when dealing with specific situations and should not consider this as an invitation for a professional-client relationship. Without the prior permission of Chandrasekaran Associates, Company Secretaries, the CACS Bulletin or content thereof or reference to it should not be made in any documentation or correspondences. We make no warranty of any kind with respect to the subject matter included herein or the completeness or accuracy of this issue of CACS Bulletin. While CACS has taken every care in the preparation of this Bulletin to ensure its accuracy, however, the Companies are requested to check the latest position with the original sources before acting. The firm and the partners are not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this issue of CACS Bulletin and in no event shall be liable for any damage or loss resulting from reliance on or use of this information. Without limiting the above the firm and the partners shall each have no responsibility for any act, error or omission, whether such acts, errors or omissions result from negligence, accident or any other cause.