



Central Depository Services (India) Limited

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COMMUNIQUÉ TO DEPOSITORY PARTICIPANTS

CDSL/OPS/DP/POLCY/2021/128

March 22, 2021

AMENDMENTS TO CDSL's DP OPERATING INSTRUCTIONS

DPs are advised to note that amendments have been incorporated in CDSL's DP Operating Instructions **Chapter 19 - Encumbrances** as per **SEBI Circular no. SEBI/HO/MRD2/DDAP/CIR/P/2020/137 dated July 24, 2020** wherein Depositories were advised to put in place a system for capturing and recording all types of encumbrances, which are specified under Regulation 28(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Further the existing terminology in the Operating Instructions governing Encumbrance from borrower – lender to the BO and the other party has been also amended.

The amendments to DP Operating Instructions **Chapter 19 [Refer Annexure-A]** and the relevant **Annexure 19.1** in track changes mode are attached herewith.

sd/-

Sheron Sawant
Sr. Manager - Operations

19 ENCUMBRANCES NON-DISPOSAL UNDERTAKING (NDU)

19.1 Objective

Encumbrances will beare mainly of 3 types, e.g. Non Disposal Undertaking (NDU), Lien and Other encumbrances

Non Disposal Undertaking (NDU) is undertaking given by a shareholder, primarily promoters (Borrower), not to transfer or otherwise alienate the securities and are in the nature of negative lien given in favour of another party, usually a lender / Investor.

Lien is the right of a creditor in possession of goods, securities or any other assets belonging to the debtor to retain them until the debt is repaid, provided that there is no contract express or implied, to the contrary. It is a right to retain possession of specific goods or securities or other movables of which the ownership vests in some other person and the possession can be retained till the owner discharges the debt or obligation to the possessor. It is a legal claim by one person on the property of another as security for payment of a debt.

All other encumbrances will be treated as Other Encumbrances in CDSL system and these encumbrances excludes Pledge and Hypothecation as there is a separate chapter for Pledge and Hypothecation.

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The Encumbrances function provided in CDSL system provides the framework to capture details of encumbrances in depository.

19.2 Reference to laws

- SEBI Circular CIR/MRD/DP/56/2017 dated June 14, 2017
- SEBI Circular SEBI/HO/MRD2/DDAP/CIR/P/2020/137 dated July 24, 2020

~~19.2~~19.3 Features

- Maker – Checker facility provided for better risk management.
- Beneficial interest of the securities under type of NDU, Lien or -OE remains with the borrower-Beneficial Owner [BO].
- Beneficial Owner [BO].
- Partial / full freeze of the securities under encumbrance NDU is allowed.

- Partial / full termination of the encumbrance placed on the securities under NDU encumbrance is allowed, so that such securities are free from encumbrance.

~~19.3~~19.4 Annexure

- Annexure 19.1 : Non-Disposal Undertaking Encumbrance Form (NDU)

19.45 Procedure

19.45.1 Pre-requisites

- The borrower BO and the lender other party must have demat account in CDSL to create a the particular type of encumbrance setup. However, the borrower BO and the lender other party may hold demat account with different DPs of CDSL.
- The borrower BO and the lender other party should have active demat account.
- The securities which borrower BO intends to freeze under the particular type of encumbrance NDU should be in active status.
- Borrower BO's DP (DP of BO) will create at least two users to implement the maker – checker feature. Maker will set up (initiate) the encumbrance setup transaction/NDU termination. Checker will verify the type of encumbrance NDU setup/NDU termination transaction initiated by the Maker. The same user cannot do initiation and verification of NDU the setup/NDU termination transactions even though access rights are given to the user.

19.45.2 Creation of Other Encumbrance Non-Disposal Undertaking (NDU)

- The borrower BO shall submit the OE Encumbrance NDU form – Annexure 19.1 duly signed by the borrower BO & lender other party to the DP of the Borrower BO.
- On receipt of the OE Encumbrance NDU form from the borrower BO, the maker of the DP of the borrower BO will check the NDU form for completeness and signature of the borrower BO. After verification, maker will setup the NDU particular type of encumbrance request.
- After Setup by maker, the NDU transaction will be verified by the checker. The checker will be given facility to view the signatures of Lender other party BO available in CDSL system. The checker will verify the signature of Lender other party on NDU form with signature available in CDSL system.

- After checker approval and necessary validation, the specified quantity of securities held in the specified ISIN in ~~borrower~~ BO's demat account will be marked as "Frozen for debit" under freeze reason code specified for ~~NDU the particular -and encumbrance~~ and moved to "Safe Keep balance".
- Emails will be sent to the email-ids of ~~borrower~~ BO and ~~lender other party~~ BO entered while creating ~~NDU the -as encumbrance as~~ well as to the email IDs of DPs of ~~borrower~~ BO and ~~lender other Party~~ BO.
- The DP of the ~~borrower~~ BO will be able to modify all fields if transaction is in "Setup by Maker" status. Further, if the transaction is verified by the checker then 4 fields viz., ~~Lender Other party~~ Email ID, ~~Borrower BO~~ Email ID, remarks and internal reference number are modifiable.
- On committing the transaction, a unique ~~NDU encumbrance~~ ID is generated. The DP of the ~~borrower~~ BO shall record the ~~NDU said~~ ID generated by the system on the ~~Encumbrance NDU~~ Form.

19.45.3 Termination of ~~NDU Other Encumbrance~~

- ~~NDU OE Encumbrance~~ created in the system can be terminated by the ~~borrower~~ BO by submitting the ~~NDU~~ form jointly signed by the ~~borrower BO~~ and ~~lender other party BO~~.
- After checker verifies the ~~OE Encumbrance NDU~~ termination transaction, securities will move from "Safe keep balance" to "Free balance" after 2 business days i.e. at the SOD of the 3rd business day.
- Emails will be sent to the email-ids of ~~borrower~~ BO and ~~lender other party~~ BO entered as well as to the email IDs of DPs of ~~borrower~~ BO and ~~lender other party~~ BO
- ~~OE NDU Encumbrance~~ termination can be done for full quantity or for partial quantity.

19.5 ~~19.6~~ Reconciliation

The DPs shall reconcile, on daily basis, the total number of ~~OE/Lien/NDU encumbrance~~ transactions (setup and termination) received with the total no. of ~~OE/Lien/NDU encumbrance~~ requests executed and the total no. of ~~NDU encumbrance~~ requests pending.

19.76. Records

19.67.1. The DP shall maintain copies of all OE/Lien /NDU-encumbrance forms for a minimum period of 5 years or any
—such period as specified by SEBI / CDSL/Prevention of Money Laundering Act, 2002
whichever is higher.

19.67.2. If any original documents (physical/ electronic) are submitted to the CID, CBI or such investigating agency or any regulatory authority, then copies of all such documents are to be retained till the investigations are complete.

Alternatively, if the photocopies are handed over for investigation to one of these agencies/authorities, the original documents (physical/ electronic) copies are to be retained till the investigations are —complete.



