

SECURITIES AND EXCHANGE BOARD OF INDIA (DEBENTURE TRUSTEES) REGULATIONS, 1993

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SECURITIES AND EXCHANGE BOARD OF INDIA (DEBENTURE TRUSTEES) REGULATIONS, 1993

In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board with the previous approval of the Central Government, hereby makes the following regulations, namely :-

CHAPTER 1 PRELIMINARY

1. Short title and commencement :-

(1) These regulations may be called the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions :-

In these regulations, unless the context otherwise requires,-

⁵(a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

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³(a a) "associate" in relation to a debenture trustee, or body corporate shall include a person,

(i) who, directly or indirectly, by himself, or in combination with

relatives, exercises control over the debenture trustee or the body corporate, as the case may be, or

(ii) in respect of whom the debenture trustee or the body corporate, as the case may be, directly or indirectly, by itself, or in combination with other persons, exercises control, or

(iii) whose director, is also a director, of the debenture trustee or the body corporate, as the case may be;

Explanation. For the purpose of this regulation, the expression 'control' shall have the same meaning as defined under clause (c) of Regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997."

4(ab) "Companies Act" means the Companies Act, 1956 (1 of 1956);

(b) "enquiry officer" means any officer of the Board, or any other person, having experience in dealing with the problems relating to the securities market, who is appointed by the Board under Chapter V;

5(ba) "debenture" means a debenture within the meaning of sub-sec. (12) of Sec. 2 of the Companies Act, 1956 (1 of 1956);

(bb) "debenture trustee" means a trustee of a trust deed for securing any issue of debentures of a body corporate;

(c) "Form" means Forms specified in Schedule 1;

(d) "inspecting authority" means one or more persons appointed by the Board to exercise powers conferred under Chapter IV:

(e) "insurance company" means a company as defined in clause (21) of Section 2 of the Companies Act;

6(ea) "issue" means an offer of sale of securities by any body corporate or by any other person or group of persons on its or their behalf, as the case may be, to the public, or the holders of securities of such body corporate or person or group of persons and includes a private placement of debentures made by a listed company, which are proposed to be listed;

"(ee) "networth" means aggregate of value of the paid up equity capital and free reserves (excluding reserves created out of

revaluation) reduced by the aggregate value of accumulated losses and deferred expenditure not written off (including miscellaneous expenses not written off) as per the latest audited balance sheet."

(f) "principal officer" means,-

(i) a secretary, manager or director of the body corporate or;

(ii) any person connected with the management or administration of the body corporate upon whom the Board has served notice of its intention of treating him as the principal officer thereof.

(g) "regulations" means Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;

⁷(h) [* * *]

(i) "scheduled bank" means a scheduled bank as defined in clause (e) of Section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);

⁸(ia) "trust deed" means a deed executed by the body corporate in favour of the trustees named therein for the benefit of the debenture holders;

(j) All other words and expressions used in these regulations but not defined, and defined in the Act ⁹[* * *] shall have the meanings respectively assigned to them in the Act ¹⁰ [* * *].

In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Regulation 2, before clause (aa) so renumbered, the following clauses shall be inserted, namely: "(a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992); by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006.

Inserted by the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2000

In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Regulation 2, clause (a) shall be renumbered as clause (aa) by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Regulation 2, clause (aa) shall be renumbered as clause (ab) by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Regulation 2, after clause (b), the following clause shall be inserted, namely: "(ba) "debenture" means a debenture within the meaning of sub-sec. (12) of Sec. 2

of the Companies Act, 1956 (1 of 1956); (bb) "debenture trustee" means a trustee of a trust deed for securing any issue of debentures of a body corporate;" by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Regulation 2, clause (h) shall be omitted as under :- "(h) "rules" means Securities and Exchange Board of India (Debenture Trustees) Rules, 1993;" by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Regulation 2, after clause (i), the following clause shall be inserted, namely: "(ia) "trust deed" means a deed executed by the body corporate in favour of the trustees named therein for the benefit of the debenture holders;" by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Regulation 2, in clause (j), the words "and the rules" occurring after the words "defined in the Act" shall be omitted, by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Regulation 2, in clause (j), words "or the rules, as the case may be" occurring at the end shall be omitted, by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006.

2A. Power of the Board to issue clarifications :-

In order to remove any difficulties in respect of the application or interpretation of these regulations, the Board may issue clarifications or guidelines in the form of circulars.

CHAPTER 2

REGISTRATION OF DEBENTURE TRUSTEES

3. Application for grant of certificate :-

(1) An application by a debenture trustee for grant of a certificate shall be made to the Board in Form A.

(2) Notwithstanding anything contained in sub-regulation (1), any application made by a debenture trustee prior to coming into force of these regulations containing such particulars as near thereto as mentioned in Form A shall be treated as an application made in pursuance of sub-regulation (1) and dealt with accordingly.

4. Furnishing of further information, clarification, etc :-

(1) The Board may require the applicant to furnish further information or clarification regarding matters which are relevant to a debenture trustee to consider the application for a grant of a certificate.

(2) The applicant or, its principal officer shall, if so required, appear before the Board for personal representation.

5. Application to conform to the requirements :-

Subject to the provisions of sub-regulation (2) of Regulation 3, any application, which is not complete in all respects and does not conform to the instructions specified in the form, shall be rejected : Provided that, before rejecting any such application, the applicant shall be given an opportunity to remove within the time specified such objections as may be indicated by the Board.

6. Consideration of application :-

The Board shall take into account for considering the grant of certificate all matters which are relevant to a debenture trustee and in particular the following namely, whether the applicant :-

(a) has the necessary infrastructure like adequate office space, equipments, and manpower to effectively discharge his activities;

(b) has any past experience as a debenture trustee or has in his employment minimum two persons who had the experience in matters which are relevant to a debenture trustee;

(c) or any person, directly or indirectly connected with the applicant has not been granted registration by the Board under the Act;

"(d) has in his employment at least one person who possesses the professional qualification in law from an institution recognised by the Government."

(e) or any of its director or principal officer is or has at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence.

(f) is a fit and proper person.

"(g) fulfills the capital adequacy requirements specified in Regulation 7-A".

7. Eligibility for being debenture trustee :-

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.

7A. Capital Adequacy Requirement :-

The capital adequacy requirement referred to in clause (g) of Regulation 6 shall not be less than the networth of one crore rupees.

Provided that a debenture trustee holding certificate of registration as on the date of commencement of the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2003 shall fulfill the networth requirements within two years from the date of such commencement.

8. Procedure for registration :-

The Board on being satisfied that the applicant is eligible, shall send an intimation to the applicant mentioning that he has been found eligible for the grant of certificate and grant a certificate in Form B subject to the payment of fees as specified in Regulation 12.

9. Renewal of certificate :-

(1) A debenture trustee may, if he so desires, make an application in Form A for renewal of certificate before three months of expiry of the period of certificate.

(2) The application for renewal of certificate under sub-regulation (1) shall be dealt with in the same manner as if it were an application for grant of a certificate made under Regulation 3.

10. Procedure where registration is not granted :-

(1) Where an application for grant of a certificate under Regulation 3 or of renewal under Regulation 9 does not fulfil the requirement set out in Regulation 6, the Board may reject the application, after giving a reasonable opportunity of being heard.

(2) The refusal to grant or renew the certificate shall be communicated by the Board within thirty days such refusal to the applicant stating therein the grounds on which the application has

been rejected.

(3) Any applicant may, being aggrieved by the decision of the Board under sub-regulation (2), apply within a period of thirty days from the date of receipt of such intimation to the Board for reconsideration of its decision.

(4) On receipt of the application made under sub-regulation (3), the Board shall reconsider its decision and communicate its findings thereon as soon as possible in writing to the applicant.

11. Effect of refusal to grant certificate or renew certificate

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Any debenture trustee whose application for grant or renewal of a certificate has been refused by the Board shall on and from the date of the receipt of the communication under sub- regulation (2) of Regulation 10 cease to act as a debenture trustee.

12. Payment of fees, and the consequences of failure to pay fees :-

(1) Every applicant eligible for grant or renewal of a certificate shall pay the fees in such manner and within the period specified in Schedule II : Provided that the Board may on sufficient cause being shown permit the debenture trustee to pay such fees at any time before the expiry of six months from the date on which such fees become due.

(2) Where a debenture trustee fails to pay the fees as provided in sub-regulation (1), the Board may suspend the certificate, whereupon the debenture trustee shall forthwith cease to act as a debenture trustee.

CHAPTER 3

RESPONSIBILITIES AND OBLIGATIONS OF DEBENTURE TRUSTEES

13. Obligation before appointment as debenture trustees :-

No debenture trustee who has been granted a certificate under Regulation 8 shall act as such in respect of each issue of debenture unless-

1 "(a) he enters into a written agreement with the body corporate before the opening of the subscription list for issue of debentures; (b) the agreement under clause (a) shall inter-alia contain (i) that the debenture trustee has agreed to act as such under the trust deed for securing an issue of debentures for the body corporate;

(ii) the time limit within which the security for the debentures shall be created."

1. Substituted for "(a) he gives consent in writing to a body corporate to act as debenture trustee under trust deed for securing any issue of debentures by each such body corporate; (b) consent under clause (a) is given before the issue of debentures for subscription." by the Securities and Exchange Board of India (Deben- ture Trustees) (Second Amendment) Regulations, 2000

13A. 13A :-

No debenture trustee shall act as such for any issue of debentures in case

(a) it is an associate of the body corporate or

(b) it has lent and the loan is not yet fully repaid or is proposing to lend money to the body corporate :

Provided that this requirement shall not be applicable in respect of debentures issued prior to the commencement of the Companies (Amendment) Act, 2000, where

(i) recovery proceedings in respect of the assets charged against security has been initiated, or

(ii) the body corporate has been referred to Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985, prior to commencement of the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2003.

14. Obligation of the debenture trustees :-

Every debenture trustee shall amongst other matters accept the trust deed which contain the matters specified in Schedule IV to the regulations.

15. Duties of the debenture trustees :-

(1) It shall be the duty of every debenture trustee to-

(a) call for periodical reports from the body corporate;

(b) ***

(c) take possession of trust property in accordance with the provisions of the trust deed;

(d) enforce security in the interest of the debenture holders;

(e) do such acts as are necessary in the event the security becomes enforceable;

(f) carry out such acts as are necessary for the protection of the debenture holders and to do all things necessary in order to resolve the grievances of the debenture holders;

(g) ascertain and satisfy itself that the -

¹"(i) in case where the allotment letter has been issued and debenture certificate is to be issued after registration of charge, the debenture certificates have been despatched by the body corporate to the debenture holders within 30 days of the registration of the charge with Registrar of Companies."

(ii) debenture certificates have been despatched to the debenture holders in accordance with the provisions of the Companies Act;

(iii) interest warrants for interest due on the debentures have been despatched to the debenture holders on or before the due dates;

(iv) debenture holders have been paid the monies due to them on the date of redemption of the debentures;

"(h) ensure on a continuous basis that the property charged to the debentures is available and adequate at all times to discharge the interest and principal amount payable in respect of the debentures and that such property is free from any other encumbrances save and except those which are specifically agreed to by the debenture trustee."

(i) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock- exchange or the trust deed;

(j) to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice;

(k) to ascertain that the debentures have been converted or redeemed in accordance with the provisions and conditions under which they are offered to the debenture holders;

(l) inform the Board immediately of any breach of trust deed or provision of any law.

² "(m) appoint a nominee director on the Board of the body

corporate 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.

(n) communicate to the debenture holders on half yearly basis the compliance of the terms of the issue by the body corporate, defaults, if any, in payment of interest or redemption of debentures and action taken therefor"

(2) A debenture trustee shall call or cause to be called by the body corporate a meeting of all the debentures holders on-

(a) a requisition in writing signed by at least one tenth of the debenture holders in value for the time being outstanding; or

(b) the happening of any event, which constitutes a default or which in the opinion of the debenture trustees affects the interests of the debenture holders.

(3) No debenture trustee shall relinquish its assignments as debenture trustee in respect of the debenture issue of any body corporate, unless and until another debenture trustee is appointed in its place by the body corporate.

(4) A debenture trustee shall maintain the networth requirements as specified in these regulations on a continuous basis and shall inform the Board immediately in respect of any shortfall in the networth and in such a case it shall not be entitled to undertake new assignments until it restores the networth to the level of specified requirement within the time specified by the Board.

(5) A debenture trustee may inspect books of accounts, records, registers of the body corporate and the trust property to the extent necessary for discharging its obligations.

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1. Substituted for "(i) refund monies due to the applicants applying for the debentures have been paid in accordance with the Companies Act and the listing agreement of the stock exchange on which the debentures of the company are listed;" by the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2000

2. Inserted by the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2000

16. Code of Conduct :-

Every debenture trustee shall abide by the Code of Conduct as specified in Schedule III.

17. Maintenance of books of accounts, records, documents etc :-

(1) Subject to the provisions of any law every debenture trustee shall keep and maintain proper books of accounts, records and documents relating to the trusteeship functions for a period of not less than five financial years preceding the current financial year.

(2) Every debenture trustee shall intimate to the Board, the place where the books of accounts, records and documents are maintained.

17A. Appointment of Compliance Officer :-

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(1) Every debenture trustee shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc, issued by the Board or the Central Government and for redressal of investors' grievances.

(2) The compliance officer shall immediately and independently report to the Board any non-compliance observed by him.

1. Inserted by "The Securities and Exchange Board of India (Investment Advice by Intermediaries)(Amendment)Regulations, 2001

18. Information to the Board :-

(1) Every debenture trustee shall as and when required by the Board submit the following information and documents namely :-

(a) the number and nature of the grievances of the debenture holders received and resolved;

(b) copies of the trust deed;

(c) non-payment or delayed payment of interest to debenture holders if any in respect of each issue of debentures of a body corporate;

(d) details of despatch and transfer of debenture certificates giving therein the dates, mode, etc.;

(e) any other particular or document which is relevant to debenture

trustee.

(2) Where any information is called for under sub-regulation (1) it shall be the duty of the debenture trustees to furnish such information.

(3) The compliance officer shall report any non-compliance, of the requirements specified in the listing agreement with respect to debenture issues and debenture holders, by the body corporate to the Board.

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CHAPTER 4

INSPECTION AND DISCIPLINARY PROCEEDINGS

19. Boards right to inspect :-

(1) Where it appears to the Board so to do, it may appoint one or more persons as inspecting authority to undertake the inspection of the books of accounts, other records and documents of the debenture trustee for any of the purposes specified in sub-regulation (2).

(2) The purposes referred to in sub-regulation (1) shall be as follows namely :-

(a) to ensure that the records and documents which are relevant to debenture trustees are being maintained in the manner required by the Board;

(b) that the provisions of the Companies Act, 1956, rules and regulations are being complied with;

(c) to ascertain as to whether there exists any circumstances, which would render the debenture trustee ineligible for grant of registration or continuance thereof;

(d) to investigate into the complaints received from investors, other debenture trustees or any other person on any matter having a bearing on the activities of the debenture trustee; and

(e) to investigate suo-moto in the interest of Securities business or investors interest into the affairs of the debenture trustee.

20. Procedure for inspection :-

(1) Before undertaking an inspection under Regulation 19, the Board shall give a reasonable notice to the debenture trustee for

that purpose.

(2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors or in public interest no such notice should be given, it may by an order in writing direct that the inspection or the affairs of the debenture trustee be taken up without such notice.

(3) On being empowered by the Board the inspecting authority shall undertake inspection and the debenture trustee against whom an inspection is being carried out shall be bound to discharge his obligations as provided under Regulation 21.

21. Obligations of debenture trustee on inspection by the Board :-

(1) It shall be the duty of every director, officer and employee of the debenture trustee who is being inspected, to produce to the inspecting authority such books and other documents in his custody or control and furnish him with the statements and information relating to the debenture trustee within such time as the inspecting authority may require.

(2) The debenture trustee shall allow the inspecting authority to have a reasonable access to the premises occupied by the debenture trustee or by any other person, on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the debenture trustee or any such other person on their behalf and also provide copies of documents or other materials which in the opinion of the inspecting authority, are relevant for the purposes of the inspection.

(3) The inspecting authority shall in the course of inspection, be entitled to examine or record statements of any officer, director or employee of the debenture trustee.

(4) It shall be the duty of every director, officer or employee of the debenture trustee to give to the inspecting authority all assistance in connection with the inspection, which the debenture trustee may reasonably be expected to give.

22. Submission of report to the Board :-

The inspecting authority shall, as soon as may be possible submit an inspection report to the Board.

23. Communication of Findings etc :-

(1) The Board shall after consideration of the inspection report communicate the findings to the debenture trustee to give it an opportunity of being heard before any action is taken by the Board on the findings of the inspecting authority.

(2) On receipt of the explanation if any from the debenture trustee the Board may call upon the debenture trustee to take such measures as the Board may deem fit in the interest of the securities market and for due compliance with the provisions of the Act, rules and regulations and give such directions as it deems fit for all or any of the following purposes, namely :-

(a) directing the debenture trustee not to act as debenture trustee for any issue of debenture by a body corporate;

(b) directing the debenture trustee to act as such as per the covenants of the trust deed;

(c) taking appropriate action against the debenture trustee in accordance with these regulations;

(d) appointing a qualified auditor to investigate into the affairs of the debenture trustee.

24. Appointment of Auditor :-

Notwithstanding anything contained above the Board may appoint a qualified auditor to investigate into the records of or the affairs of the debenture trustee: Provided that the auditor so appointed shall have the same powers of the inspecting authority as mentioned in Regulation 19 and the obligation of the debenture trustee in Regulation 21 shall be applicable to the investigation under this regulation.

Explanation.- For the purposes of this regulation, the expression "qualified auditor" shall have the same meaning as given to it in Section 226 of the Companies Act, 1956 (I of 1956).

CHAPTER 5

PROCEDURE FOR ACTION IN CASE OF DEFAULT

25. Liability for action in case of default :-

(1) A debenture trustee who-

(a) fails to comply with any conditions subject to which certificate has been granted;

(b) contravenes any of the provisions of the act, rules or regulations;

(c) contravenes the provisions of the Companies Act or the rules made thereunder;

(2) The penalties referred to in sub-regulation (1) may be either :-

(a) suspension of certificate after enquiry for a specified period; or

(b) cancellation of certificate.

26. Suspension, cancellation of certificate :-

(1) A penalty of suspension of certificate granted to a debenture trustee may be imposed where a debenture trustee-

(i) violates the provisions of the Act, rules or regulations;

(ii) does not follow the code of conduct specified at Schedule III.

(iii) fails to furnish information relating to his business as debenture trustee as required by the Board.

(iv) furnishes wrong or false information;

(v) does not submit reports as required by the Board;

(vi) does not cooperate in any enquiry conducted by the Board;

(vii) indulges in manipulating or price rigging or cornering activities;

(viii) is guilty of misconduct or improper or unbusinesslike or unprofessional conduct;

(ix) fails to pay the fees as specified in Regulation 12;

(x) violates the conditions subject to which certificate has been granted;

(xi) fails to fulfil the obligations under the trust deed: Provided that the Board for reason to be recorded in writing may in case of repeated defaults of the type mentioned above impose a penalty of cancellation of certificate on the debenture trustee.

(2) A penalty of cancellation of certificate granted to a debenture trustee may be imposed if the debenture trustee-

(i) indulges in deliberate manipulation or price rigging or cornering

activities affecting the securities market and the investors' interests;

(ii) is guilty of fraud, or is convicted of a criminal offence;

(iii) violates any provision of insider trading regulations;

(iv) fails to fulfil the obligations under the trust deed or has been discharged from its office under any of the circumstances mentioned in S.71 of the Indian Trust Act, 1882;

(v) violates the provisions of the Act, rules and regulations;

(vi) violates the provisions of Companies Act and the rules made thereunder;

(vii) has been removed by the debenture holders by a resolution passed by not less than 75 per cent of the debenture holders.

27. Manner of order of suspension and cancellation of certificate :-

No order of penalty of suspension or cancellation shall be imposed except after holding an enquiry in accordance with the procedure specified in Regulation 28.

28. Manner of holding inquiry :-

(1) For the purpose of holding an inquiry under Regulation 27, the Board may appoint an enquiry officer.

(2) The enquiry officer shall issue to the debenture trustee a notice at the registered office or the principal place of business of the debenture trustee.

(3) The debenture trustee may, within thirty days from the date of receipt of such notice, furnish to the enquiry officer a reply together with copies of documentary or other evidence relied on by him or sought by the Board from the debenture trustee.

(4) The enquiry officer shall, give a reasonable opportunity of hearing to the debenture trustee to enable him to make submissions in support of his reply made under sub-regulation (3).

(5) Before the enquiry officer, the debenture trustee may either appear in person or through any person duly authorised by the debenture trustee : Provided that no lawyer or advocate shall be permitted to represent the debenture trustee at the enquiry : Provided further that where a lawyer or an advocate has been

appointed by the Board as a presenting officer under sub-regulation (6), it shall be lawful for the debenture trustee to present its case through a lawyer or advocate.

(6) If it is considered necessary, the enquiry officer may require the Board to appoint a presenting officer to represent its case.

(7) The enquiry officer shall, after taking into account all relevant facts and submissions made by the debenture trustee, submit a report to the Board and recommend the penalty to be awarded as also the justification of the penalty proposed.

29. Show cause notice and order :-

(1) On receipt of the report from the enquiry officer, the Board shall consider the same and issue a show cause notice as to why the penalty as it considers appropriate should not be imposed.

(2) The debenture trustee shall within twenty-one days of the date of the receipt of the show cause notice send a reply to the Board,

(3) The Board after considering the reply to the show cause notice if received, shall as soon as possible but not later than thirty days from the receipt of the reply, if any, pass such orders as it thinks fit.

(4) Every order passed under sub-regulation (3) shall be self-contained and give reasons for the conclusions stated therein including justification of the penalty imposed by that order.

(5) The Board shall send a copy of the order under sub-regulation (3) to the debenture trustee.

30. Effect of suspension and cancellation of certificate of debenture trustee :-

(1) On and from the date of the suspension of the certificate the debenture trustee shall cease to act as a debenture trustee during the period of suspension.

(2) On and from the date of cancellation, of the certificate the debenture trustee shall with immediate effect cease to act as debenture trustee.

31. Publication of order of suspension or cancellation :-

The order of suspension or cancellation of certificate passed under sub-regulation (3) of Regulation 29, shall be published in at least

two daily newspapers by the Board.

32. Appeal to the Central Government :-

¹ Any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999 (i.e., after 16th December 1999), under these regulations may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter"

1. Substituted for regulation 32 "Any person aggrieved by an order of the Board under the regulations may prefer an appeal to the Central Government under the Securities and Exchange Board of India (Appeal to the Central Government) Rules, 1993." by the "Securities and Exchange Board of India (Appeal to the Securities Appellate Tribunal) (Amendment) Regulations, 2000".

SCHEDULE 1

SCHEDULE 1

SCHEDULE 2

SCHEDULE II

Regulation 12) \ \ \ \ Fees ²⁰ In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in Schedule II, in paragraph 1, for the words "Rupees five lacs", word "ten lakh rupees" shall be substituted, by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006, on Notification No. F. No. SEBI / LAD / DOP / 0709 / 2006, dt. 7th Sep., 2006- Gazette of India, Exty, Pt. II-S.3(ii), No. 999, dt. 7th Sep., 2006-, p. 53.] = 2006 CCS/P. 1200/H. 428.

²¹[10000]Substituted for "1. Every debenture trustee shall subject to Paragraphs 3 and 4 of this Schedule pay registration fees of Rs. 5 lakhs in the manner specified below : \ \ (i) Rs. 2 lakhs as 1st instalment for the first year from the date of initial grant \ of certificate. \ \ (ii) Rs. 2 lakhs as 2nd instalment for the second year from the date of initial \ grant of certificate. \ \ (iii) Rs. 1 lakh as 3rd instalment for the third year from the date of initial grant \ of certificate. \ 2. Every debenture trustee shall subject to Paragraphs 3 and 4 of this schedule pay a renewal fee of Rs. 20,000/- every year to keep the certificate in force or renewal thereof. \ 3. (a) The first instalment of the fee referred to in Paragraphs 1 and 2 above shall be paid within 15 days from the date of intimation from the Board under Regulation 8 . \ \ (b) The fee referred to in Paragraph 1(ii), (iii) and 2 shall be paid on or before \ expiry of 12 months from the date of payment of fees paid in the preceding calendar \ year. \ 4. The fees specified in Paragraphs I and 2 above, shall be payable by a cheque, draft or other instrument in favour of "Securities and Exchange Board of India" at Bombay. ", vide " THE SECURITIES AND EXCHANGE BOARD OF INDIA (DEBENTURE TRUSTEES) REGULATIONS, 1993" Dt.30th September, 1999 Published in S.E.B.I., Noti. No. S.O. 795(E), dated September 30, 1999, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 30th September, 1999, pp. 2-3, No. 593 [F. No. SEBI/LE/18728/99] [L] ["1. Every debenture trustee shall pay a sum of "ten lakh rupees" as registration fees at the time of the grant of certificate by the Board. ²² In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in paragraph 2, for the words and figures "Rs. 2.5 lacs", the words "five lakh rupees" shall be substituted, by the Securities

and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006, on Notification No. F. No. SEBI / LAD / DOP / 0709 / 2006, dt. 7th Sep., 2006- Gazette of India, Exty, Pt. II-S.3(ii), No. 999, dt. 7th Sep., 2006-, p. 53.] = 2006 CCS/P. 1200/H. 428 . 2. Every debenture trustee to keep registration in force shall pay renewal fee of "five lakh rupees" every three years from the fourth year from the date of initial registration. 3. (a) The fee referred to in Paragraph 1 shall be paid by the debenture trustees within fifteen days from the date of receipt of intimation from the Board under Regulation 8. (b) The fee referred to in Paragraph 2 shall be paid by the debenture trustee within fifteen days of receipt of intimation from the Board disposing of the application for renewal made under sub-regulation (1) of Regulation 9. ²³ In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, after paragraph 3, the following paragraph shall be inserted, namely: "3A. The non-refundable fee payable along with an application for registration under sub-regulation (1-A) of Regulation 3 or an application for renewal of registration under sub-regulation (1A) of Regulation 9 shall be a sum of twenty five thousand rupees." by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006, on Notification No. F. No. SEBI / LAD / DOP / 0709 / 2006, dt. 7th Sep., 2006- Gazette of India, Exty, Pt. II-S.3(ii), No. 999, dt. 7th Sep., 2006-, p. 53.] = 2006 CCS/P. 1200/H. 428. 3A. The non-refundable fee payable along with an application for registration under sub-regulation (1A) of Regulation 3 or an application for renewal of registration under sub-regulation (1A) of Regulation 9 shall be a sum of twenty five thousand rupees. ²⁴ In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, in paragraph 4, for the words and figures "paragraphs 1 and 2", the words and figures "paragraphs 1,2, and 3A" shall be substituted, by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006, Notification No. F. No. SEBI / LAD / DOP / 0709 / 2006, dt. 7th Sep., 2006- Gazette of India, Exty, Pt. II-S.3(ii), No. 999, dt. 7th Sep., 2006-, p. 53.] = 2006 CCS/P. 1200/H. 428.

SCHEDULE 3

3

Schedule III

Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993

[Regulation 16]

CODE OF CONDUCT

1. A Debenture Trustee shall make all efforts to protect the interests of debenture holders.
2. A Debenture Trustee shall maintain high standards of integrity, dignity and fairness in the conduct of its business.
3. A Debenture Trustee shall fulfill its obligations in a prompt, ethical and professional manner.
4. A Debenture Trustee shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.
5. A Debenture Trustee shall take all reasonable steps to establish the true and

full identity of each of its clients, and of each client's financial situation and maintain record of the same.

6. A Debenture Trustee shall ensure that any change in registration status/any penal action taken by Board or any material change in financial position which may adversely affect the interests of clients/debenture holders is promptly informed to the clients and any business remaining outstanding is transferred to another registered intermediary in accordance with any instructions of the affected clients.
7. A Debenture Trustee shall avoid conflict of interest and make adequate disclosure of its interest.
8. A Debenture Trustee shall not divulge to anybody either orally or in writing, directly or indirectly, any confidential information about its clients which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force.
9. A Debenture Trustee shall put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business or where any conflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner.
10. A Debenture Trustee shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as Debenture Trustee which would impair its ability to render fair, objective and unbiased services.
11. A Debenture Trustee shall not indulge in any unfair competition, which is likely to harm the interests of other trustees or debenture holders or is likely to place such other debenture trustees in a disadvantageous position while competing for or executing any assignment nor shall it wean away the clients of another trustee on assurance of lower fees.
12. A Debenture Trustee shall not discriminate among its clients, except and save on ethical and commercial considerations.
13. A Debenture Trustee shall share information available with it regarding client companies, with registered credit rating agencies.
14. A Debenture Trustee shall provide clients and debenture holders with adequate and appropriate information about its business, including contact details, services available to clients, and the identity and status of

- employees
and others acting on its behalf with whom the client may have to
contact.
15. A Debenture Trustee shall ensure that adequate disclosures are made
to the
debenture holders, in a comprehensible and timely manner so as to
enable
them to make a balanced and informed decision.
16. A Debenture Trustee shall endeavour to ensure that
- a. Inquiries from debenture holders are adequately dealt with;
 - b. Grievances of debenture holders are redressed in a timely and
appropriate
manner;
 - c. Where a complaint is not remedied promptly, the debenture-holder
is
advised of any further steps which may be available to the debenture
holder under the regulatory system.
17. A Debenture Trustee shall make reasonable efforts to avoid
misrepresentation
and ensure that the information provided to the debenture holders is
not
misleading.
18. A Debenture Trustee shall maintain required level of knowledge and
competency and abide by the provisions of the Act, regulations and
circulars and
Guidelines. The Debenture Trustee shall also comply with the award of
the
Ombudsman passed under Securities and Exchange Board of India
(Ombudsman) Regulations, 2003.
19. A Debenture Trustee shall not make untrue statement or suppress any
material fact in any documents, reports, papers or information
furnished to the
Board.
20. A Debenture Trustee or any of its directors, partners or manager having
the
management of the whole or substantially the whole of affairs of the
business,
shall not either through its account or their respective accounts or
through
their associates or family members, relatives or friends indulge in any
insider
trading.
21. A Debenture Trustee shall ensure that the board is promptly informed
about
any action, legal proceeding etc. initiated against it in respect of any
material
breach or non-compliance by it, of any law, rules, regulations
directions of the
board or of any other regulatory body.
22. (a) A Debenture Trustee or any of his employees shall not render, directly or
indirectly, any investment advice about any security in the publicly

accessible media, whether real-time or non real-time unless a disclosure of his

interest including long or short position in the said security has been made, while rendering such advice.

(b) In case, an employee of the Debenture Trustee is rendering such advice, the Debenture Trustee shall ensure that he discloses his interest, the interest of his dependent family members and that of the employer, including their long or short position in the said security, while rendering such advice.

23. A Debenture Trustee shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).
24. A Debenture Trustee shall ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf.
25. A Debenture Trustee shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients, debenture holders and other registered entities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.
26. A Debenture Trustee shall be responsible for the acts or omissions of its employees and agents in respect to the conduct of its business.
27. A Debenture Trustee shall provide adequate freedom and powers to its compliance officer for the effective discharge of its duties.
28. A Debenture Trustee shall ensure that the senior management, particularly decision makers have access to all relevant information about the business on a timely basis.
29. A Debenture Trustee shall ensure that good corporate policies and corporate governance is in place.
30. A Debenture Trustee shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in the carrying out of their duties. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance of conflict of interests, disclosure of shareholdings and interests, etc.
31. A Debenture Trustee shall not be party to
 - (i) Creation of false market; (ii) Price rigging or manipulation;
 - (iii) Passing of unpublished price sensitive information in respect of securities which are listed and proposed to be listed in any stock exchange to any person or intermediary.

"SCHEDULE IV

Securities and Exchange Board of India
(Debenture Trustees) Regulations, 1993

[Regulation 14] CONTENTS OF TRUST DEED

Every debenture trustee shall ensure that the trust deed executed between a body corporate and debenture trustee shall amongst other things provide for the following matters namely :

1. Preamble. This section shall *inter-alia* state the rights of the debenture holders and the manner in which these rights are vested in the trustee.
2. Description of instruments. This section shall *inter-alia* state the purpose of raising finance through debenture issue, description of debentures as regards amount, tenure, interest/coupon rate, periodicity of payment, period for redemption, options available, terms of conversion/redemption of the debentures in terms of the issue to the debenture holders, debt equity ratio and debt service coverage ratio, if applicable;
3. Details of Charged Securities (Existing or future). This section shall *inter-alia* state the details regarding the following :
 - i. Nature of charge, examination of title
 - ii. Rank of charge of assets viz. First, second, pari passu, residual etc.
 - iii. Charging of future assets.
 - iv. Time limit within which the future security for the issue of debentures shall be created as specified in SEBI (Disclosure and Investor Protection) Guidelines, 2000.
 - v. Enforceability of securities, events under which security becomes enforceable.
 - vi. Obligation of company not to create further charge or encumbrance of the trust property without prior approval of the trustee.
 - vii. Minimum security cover required,
 - viii. Provision for subsequent valuation.
 - ix. Circumstances when the security will become enforceable, x. Method and mode of preservation of assets charged as security for

debenture holders.

xi. Circumstances specifying when the security may be disposed off or leased out with the approval of trustees.

xii. Procedure for allowing inspection of charged assets, book of accounts, by debenture trustee or any person or persons authorised by it;

4. Events of defaults. This section shall clearly define the event of default which if occurs shall invite the actions by debenture trustee.

This

section shall also contain the steps which shall be taken by debenture trustee in the event of defaults.

5. Rights of debenture trustees. This section shall *inter-alia* provide that:

i. Debenture Trustee is entitled to inspect the registers of the company and to take copies and extracts thereof;

ii. Debenture Trustee has a right to appoint a nominee director.

6. Obligations of body corporates.

This section shall *inter-alia* state the following with respect to company's duties :

1. to maintain Register of debenture holders with addresses with record of subsequent transfers and changes of ownership.
2. to keep proper books of accounts open for inspection by debenture trustee
3. to furnish whatever required information to debenture trustee including copies of reports, balance sheets, profit and loss accounts etc.
4. to keep charged property/security adequately insured and in proper condition.
5. to permit debenture trustee to enter and inspect the state and condition of charged assets.
6. to pay all taxes, cesses, insurance premia with respect to charged property/security, on time.
7. to inform debenture trustee before declaring or distributing dividend.
8. to comply with all guidelines/directions issued by any Regulatory authority, with respect to the instant debenture issue.
9. to create debenture redemption reserve as per the SEBI (Disclosure and Investor Protection) Guidelines, 2000 and the provisions of Companies Act and submit an auditor's certificate to the trustee.
10. to convert the debentures into equity in accordance with the terms of the issue, if applicable.
11. to inform debenture trustee about any change in nature and conduct of business by company before such change.
12. to keep the debenture trustee informed of all orders, directions, notices, of court/tribunal affecting or likely to affect the charged assets.
13. to inform debenture trustee of any major change in composition of its Board of Directors, which may amount to change in control as de

fined in SEBI (Substantial Acquisition of shares and Takeovers Regulations, 1997.

14. to submit any such information, as required by the debenture trustee.
15. fee or commission of debenture trustees.
16. obligation to inform debenture trustee about any change in nature and conduct of business by the body corporate before such change.
17. obligation of the body corporate to forward a quarterly report to debenture trustees containing the following particulars :

(i) updated list of the names and addresses of the debenture holders; (ii) details of interest due but unpaid and reasons thereof;

(iii) the number and nature of grievances received from debenture holders and resolved by the body corporate;

(iv) a statement that the assets of the body corporate which are available by way of security are sufficient to discharge the claims of the debenture holders as and when they become due.

7. Miscellaneous.

a. Procedure for appointment and removal of trustee including appointment of new trustees.

b. Provision that the debenture trustee shall not relinquish from its assignment unless an other debenture trustee has been appointed.

c. Procedure to remove debenture trustee by debenture holders providing for removal on a resolution passed by atleast 75% of the total debenture holders of a body corporate.

d. Provisions for redressal of grievances of debenture holders.

NOTE.

The debenture trustee may incorporate additional clauses, provided that the additional clauses do not dilute or contravene the provisions of the above clauses."