

**THE GAZETTE OF INDIA**  
**EXTRAORDINARY**  
**PART –II – SECTION 3 – SUB SECTION (ii)**  
**PUBLISHED BY AUTHORITY**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**NOTIFICATION**  
**Mumbai, the 4<sup>th</sup> July, 2003**

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**(DEBENTURE TRUSTEES) (AMENDMENT) REGULATIONS, 2003**

S.O. No. 763(E). In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Debenture Trustees ) Regulations, 1993, namely:-

1. (i) These regulations may be called the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2003.

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

2. In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993(hereinafter referred to as 'the said Regulations'): -

(i) in regulation 2 of the said Regulations, after clause (e) the following shall be inserted, namely -

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“(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.”

(ii) after regulation 2 of the said Regulations, the following shall be inserted, namely –

**“Power of the Board to issue clarifications-**

2A. 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.”

(iii) in regulation 6 of the said Regulations,

(a) for clause (d) the following shall be substituted, namely –

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

(b) after clause (f) the following shall be inserted, namely –

“(g) fulfills the capital adequacy requirements specified in regulation 7A”

(iv) after regulation 7 of the said Regulations, the following regulation shall be inserted, namely –

**“Capital Adequacy Requirement.**

**7A.** 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.”

(v) for regulation 13A of the said Regulations, the following regulation shall be substituted, namely -

“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.”

(vi) in Regulation 15 of the said Regulations,

(a) in sub-regulation (1),

(i) clause (b) shall be omitted.

(ii) in clause (g), for the word “ensure” the words “ascertain and satisfy itself” shall be substituted.

(iii) for clause (h) the following shall be substituted, namely :-

“(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.”

(b) after sub-regulation (2) the following shall be inserted, namely -

“(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.”

(vii) in regulation 17A of the said Regulations, after sub regulation (2) the following shall be inserted, namely -

“(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.”

(viii) for the Schedule IV of the said Regulations the following shall be substituted , namely—

**“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 defined in SEBI (Substantia 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

[F. No. SEBI/LGL/11835/2003]

**G.N. BAJPAI**  
**CHAIRMAN**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

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**Footnote :**

1. Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993, were published in the Gazette of India on December 29, 1993, vide No.SEBI/LE/12/93.
2. It was subsequently amended –
  - (a) on November 28, 1995 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 1995 vide S.O. No.939 (E).
  - (b) on January 5, 1998 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 1998 vide S.O. No.16(E).
  - (c) on September 30, 1999 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 1999 vide S.O. No.795 (E).
  - (d) on February 17, 2000 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2000 vide S.O. No.135 (E).
  - (e) on August 8, 2000 by the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2000 vide S.O. No.743(E).
  - (f) on May 28, 2000 by the Securities and Exchange Board of India (Appeal to Securities Appellate Tribunal) (Amendment) Regulations, 2000 vide S.O. No.278(E).
  - (g) on May 29, 2001 by the Securities and Exchange Board of India (Investment Advice by Intermediaries) (Amendment) Regulations, 2001 vide S.O. No. 476(E).
  - (h) on September 27, 2002 by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 vide S.O. No.1045(E).

