

SEBI/HO/MIRSD/CRADT/CIR/P/2020/218

November 03, 2020

To,

All issuers who propose to list their debt securities

All Recognized Stock Exchanges

All Debenture Trustees registered with SEBI

Dear Sir/ Madam,

Sub: Creation of Security in issuance of listed debt securities and 'due diligence' by debenture trustee(s)

1. In order to secure the interest of investors in listed debt securities and to enable debenture trustee(s) to perform their duties effectively, amendments to the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulations) and SEBI (Debenture Trustees) Regulations, 1993 ("DT Regulations") were approved by SEBI Board and notified vide Gazette Notifications no. 34 and 35 dated October 08, 2020. Following guidelines are issued to give effect to above amendments:

A. Documents/ Consents required at the time of entering into debenture trustee agreement

2. Regulations 17, 21 and 21B of ILDS Regulations require an Issuer to disclose a proposal to create security in offer document ("OD") or private placement memorandum ("PPM")/ information memorandum ("IM"). Schedule I of ILDS Regulations specifies that the type of security (movable, immovable, tangible, intangible etc.) and type of charge (pledge, hypothecation, mortgage etc.) shall be disclosed by the Issuer.

3. Regulation 13 of the DT Regulations stipulates that the debenture trustee shall enter into a written agreement ("debenture trustee agreement") with the Issuer before the debenture trustee agrees to act as debenture trustee in respect of the said issue of debt securities.

4. In order to enable the debenture trustee to exercise due diligence with respect to creation of security, the Issuer at the time of entering into debenture trustee agreement shall provide the following information/ documents to the debenture trustee(s):
- 4.1. Details of assets, movable property and immovable property on which charge is proposed to be created including title deeds (original/ certified true copy by issuers/ certified true copy by existing charge holders, as available) or title reports issued by a legal counsel/ advocates, copies of the relevant agreements/ Memorandum of Understanding, copy of evidence of registration with Sub-registrar, Registrar of Companies, Central Registry of Securitization Asset Reconstruction and Security Interest (CERSAI) etc.
- 4.2. For unencumbered assets, an undertaking that the assets on which charge is proposed to be created are free from any encumbrances.
- 4.3. For encumbered assets, on which charge is proposed to be created, the following consents along-with their validity as on date of their submission:
- (a) Details of existing charge over the assets along with details of charge holders, value/ amount, copy of evidence of registration with Sub-registrar, Registrar of Companies, CERSAI, Information Utility (IU) registered with Insolvency and Bankruptcy Board of India (IBBI) etc. as applicable;
 - (b) Consent/ No-objection certificate (NOC) from existing charge holders for further creation of charge on the assets or relevant transaction documents wherein existing charge holders have given conditional consent/ permission to the Issuer to create further charge on the assets, along-with terms of such conditional consent/ permission, if any;
 - (c) Consent/ NOC from existing unsecured lenders, in case, negative lien is created by Issuer in favour of unsecured lenders.
- 4.4. In case of personal guarantee or any other document/ letter with similar intent is offered as security or a part of security:
- (a) Details of guarantor viz. relationship with the Issuer;
 - (b) Net worth statement (not older than 6 months from the date of debenture trustee agreement) certified by a chartered accountant of the guarantor;

- (c) List of assets of the guarantor including undertakings/ consent/ NOC as per para 4.2 and 4.3 above;
 - (d) Conditions of invocation of guarantee including details of put options or any other terms and conditions which may impact the security created;
 - (e) Executed copies of previously entered agreements for providing guarantee to any other person, if any.
- 4.5. In case of corporate guarantee or any other document/ letter with similar intent is offered as security or a part of security:
- (a) Details of guarantor viz. holding/ subsidiary/ associate company etc.;
 - (b) Audited financial statements (not older than 6 months from the date of debenture trustee agreement) of guarantor including details of all contingent liabilities;
 - (c) List of assets of the guarantor along-with undertakings/ consent/ NOC as per para 4.2 and 4.3 above;
 - (d) Conditions of invocation of guarantee including details of put options or any other terms and conditions which may impact the security created;
 - (e) Impact on the security in case of restructuring activity of the guarantor;
 - (f) Undertaking by the guarantor that the guarantee shall be disclosed as “contingent liability” in the “notes to accounts” of financial statement of the guarantor;
 - (g) Copy of Board resolution of the guarantor for the guarantee provided in respect of the debt securities of the Issuer;
 - (h) Executed copies of previously entered agreements for providing guarantee to any other person, if any.
- 4.6. In case securities (equity shares etc.) are being offered as security then a holding statement from the depository participant along-with an undertaking that these securities shall be pledged in favour of debenture trustee(s) in the depository system.
- 4.7. Details of any other form of security being offered viz. Debt Service Reserve Account etc.;
- 4.8. Any other information, documents or records required by debenture trustee with regard to creation of security and perfection of security.

B. Due diligence by debenture trustee for creation of security

5. Regulation 15(6) of SEBI (Debenture Trustees) Regulations, 1993 (DT Regulations) inter-alia requires debenture trustee, to exercise independent due diligence and Regulation 15(1)(i) of DT Regulations places obligations on the debenture trustee to ensure that the assets of the Issuers are sufficient to discharge the interest and principal amount with respect to debt securities of the Issuers at all times.
6. Debenture trustee(s) by itself or through its advisers or experts shall independently carry out due diligence. The terms and conditions with respect to exercising due diligence shall also be included in the debenture trustee agreement. The due diligence to be exercised by debenture trustee(s) with respect to creation of security shall inter-alia include the following:
 - 6.1. Debenture trustee shall verify that the assets provided by Issuer for creation of security are free from any encumbrances or necessary permissions or consents has been obtained from existing charge holders by carrying out the following checks:
 - (a) Verify from Registrar of Companies, Sub-registrar, CERSAI, IU or other sources where charge is registered/ disclosed as per terms.
 - (b) In case of conditional consent/ permission received as per para 4.3(b) above:
 - i. Verify whether such conditional consent/ permission given to Issuer by existing charge holders is valid as per terms of transaction documents;
 - ii. Intimate to existing charge holders via e-mail about the proposal to create further charge on assets by Issuer seeking their comments/ objections, if any, to be communicated to debenture trustee within next 5 working days.
 - 6.2. In case of personal guarantee, corporate guarantee and any other guarantees/ form of security, the debenture trustee shall verify the relevant filings made on websites of Ministry of Corporate Affairs, Stock Exchange(s), CIBIL, IU etc. and obtain appraisal report, necessary financial certificates viz. from statutory auditor in case of corporate guarantee, certificate from Chartered Accountant in case of personal guarantee, as applicable, of the guarantor/ Issuer.
7. Debenture trustee, by itself or through its appointed agencies viz. chartered accountant firm, registered valuer, legal counsel etc., shall prepare one or more reports viz. valuation report,

ROC search report, title search report/ appraisal report, asset cover certificate, any other report/ certificate as applicable etc. and shall independently assess that the assets for creation of security are adequate for the proposed issue of debt securities.

8. Debenture trustee shall issue 'due-diligence certificate' as per format specified in Annexure A to the Issuer subject to the following:
 - 8.1. Information on consents/ permissions required for creation of further charge on assets are adequately disclosed in OD or PPM/ IM.
 - 8.2. All disclosures made in the OD or PPM/ IM with respect to creation of security are in confirmation with the clauses of debenture trustee agreement.
 - 8.3. All covenants proposed to be included in debenture trust deed (including any side letter, accelerated payment clause etc.) are disclosed in OD or PPM/ IM.
9. Debenture trustee(s) shall maintain records and documents pertaining to due diligence exercised for a minimum period of five years from redemption of the debt securities.

C. Disclosures in the offer document or private placement memorandum/ information memorandum and filing of OD or PPM/ IM by the Issuer

10. The Issuer, in addition to disclosures made under Schedule I of ILDS Regulations and circulars issued thereunder, shall also disclose the following in the OD or PPM/ IM:
 - 10.1. *"Debt securities shall be considered as secured only if the charged asset is registered with Sub-registrar and Registrar of Companies or CERSAI or Depository etc., as applicable, or is independently verifiable by the debenture trustee."*;
 - 10.2. Terms and conditions of debenture trustee agreement including fees charged by debenture trustees(s), details of security to be created and process of due diligence carried out by the debenture trustee;
 - 10.3. Due diligence certificate as per the format specified in Annexure A.
11. An Issuer proposing to file draft OD or PPM/ IM for offering securities through electronic book mechanism or serially printing PPM/ IM as per Section 42 of Companies Act, 2013 and rules made thereunder shall submit the due diligence certificate from debenture trustee to stock exchange as per format specified in Annexure A.

D. Creation and registration of charge of security by Issuer

12. Before making the application for listing of debt securities, the Issuer shall create charge as specified in the OD or PPM/ IM, in favour of the debenture trustee and also execute debenture trust deed (DTD) with the debenture trustee.
13. The Stock Exchange(s) shall list the debt securities only upon receipt of a due diligence certificate as per format specified in Annexure B from debenture trustee confirming creation of charge and execution of the DTD.
14. The charge created by Issuer shall be registered with Sub-registrar, Registrar of Companies, CERSAI, Depository etc., as applicable, within 30 days of creation of such charge. In case the charge is not registered anywhere or is not independently verifiable, then the same shall be considered a breach of covenants/ terms of the issue by the Issuer.
15. This circular is issued in exercise of the powers conferred upon SEBI under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 2A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 and Regulation 31(1) of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.
16. **Applicability:** The provisions of this circular shall come into force w.e.f. January 01, 2021 i.e. for new issues proposed to be listed on or after January 01, 2021.

Yours faithfully,

Richa G. Agarwal
Deputy General Manager
Market intermediaries Regulation & Supervision Department
Email id: richag@sebi.gov.in
Phone: +91-22-26449596

FORMAT OF DUE DILIGENCE CERTIFICATE TO BE GIVEN BY THE DEBENTURE TRUSTEE AT THE TIME OF FILING THE DRAFT OFFER DOCUMENT OR PRIVATE PLACEMENT MEMORANDUM/ INFORMATION MEMORANDUM

To,

Stock Exchange

Dear Sir / Madam,

SUB.: ISSUE OF _____ BY _____ LTD.

We, the debenture trustee(s) to the above mentioned forthcoming issue state as follows:

- 1) We have examined documents pertaining to the said issue and other such relevant documents, reports and certifications.
- 2) On the basis of such examination and of the discussions with the Issuer, its directors and other officers, other agencies and on independent verification of the various relevant documents, reports and certifications, WE CONFIRM that:
 - a) The Issuer has made adequate provisions for and/or has taken steps to provide for adequate security for the debt securities to be issued.
 - b) The Issuer has obtained the permissions / consents necessary for creating security on the said property(ies).
 - c) The Issuer has made all the relevant disclosures about the security and also its continued obligations towards the holders of debt securities.
 - d) Issuer has adequately disclosed all consents/ permissions required for creation of further charge on assets in offer document or private placement memorandum/ information memorandum and all disclosures made in the offer document or private placement memorandum/ information memorandum with respect to creation of security are in confirmation with the clauses of debenture trustee agreement.
 - e) Issuer has disclosed all covenants proposed to be included in debenture trust deed (including any side letter, accelerated payment clause etc.), offer document or private placement memorandum/ information memorandum.
 - f) Issuer has given an undertaking that charge shall be created in favour of debenture trustee as per terms of issue before filing of listing application.

We have satisfied ourselves about the ability of the Issuer to service the debt securities.

PLACE:

DATE:

DEBENTURE TRUSTEE TO THE ISSUE WITH HIS STAMP

FORMAT OF DUE DILIGENCE CERTIFICATE TO BE GIVEN BY THE DEBENTURE TRUSTEE AT THE TIME OF FILING OF LISTING APPLICATION BY ISSUER

To,

Stock Exchange

Dear Sir / Madam,

SUB.: ISSUE OF _____ BY _____ LTD.

We, the debenture trustee(s) to the above mentioned forthcoming issue state as follows:

- 1) We have examined documents pertaining to the creation of charge over assets of Issuer.
- 2) On the basis of such examination and of the discussions with the Issuer, its directors and other officers, other agencies and of independent verification of the various relevant documents, WE CONFIRM that:
 - a) The Issuer has created charge over its assets in favour of debenture trustee as per terms of offer document or private placement memorandum/ information memorandum and debenture trustee agreement.
 - b) Issuer has executed the debenture trust deed as per terms of offer document or private placement memorandum/ information memorandum and debenture trustee agreement.
 - c) The Issuer has given an undertaking that charge shall be registered with Sub-registrar, Registrar of Companies, Central Registry of Securitization Asset Reconstruction and Security Interest (CERSAI), Depository etc., as applicable, within 30 days of creation of charge.

We have satisfied ourselves about the ability of the Issuer to service the debt securities.

PLACE:

DATE:

DEBENTURE TRUSTEE TO THE ISSUE WITH HIS STAMP