



Debenture trustee's role strengthened | Changes in issuance of debt securities | Mandatory forensic audit disclosure

INSIGHTS

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SEBI has introduced various changes in relation to issuance of debt securities and strengthening of the role of debenture trustees. Additionally, SEBI has now mandated listed companies to make prescribed disclosures in relation to initiation of forensic audit without any materiality test. The key changes are summarized below:

A. DEBT SECURITIES, DEBENTURE TRUSTEES RELATED CHANGES

- Trust deed changes:** Trust deeds to be entered into by debenture trustees to comprise of following:
 - Part A containing statutory/standard information pertaining to the debt issue;
 - Part B containing details specific to the particular debt issue.
- Implementation of recovery expense fund:** Trustee to also ensure the implementation of recovery expense fund in addition to the conditions regarding creation of security for the debentures, if any, debenture redemption reserve;
- Due diligence by trustee:** In cases where listed debt securities are secured by way of receivables/ book debts, trustee shall:
 - carry out the necessary due diligence and monitor the asset cover in the manner as may be specified by SEBI from time to time, on a quarterly basis;
 - obtain a certificate from the statutory auditor of the issuer giving the value of receivables/book debts including compliance with the covenants of the Offer Document/Information Memorandum in the manner as may be specified by SEBI from time to time, on a half-yearly basis.

Further, before creating a charge on the security for the debentures, the debenture trustee shall exercise independent due diligence to ensure that such security is free from any encumbrance or that it has obtained the necessary consent from other charge-holders if the security has an existing charge, in the manner as may be specified by SEBI from time to time.

- Meeting of debenture holders on breach:** A debenture trustee is obligated to call or cause to be called by the body corporate a meeting of all the debenture holders on breach of covenants (as specified in the Offer Document/Information Memorandum and/or debenture trust deed).
- Inter-creditor agreements:** Subject to the approval of the debenture holders and the conditions as may be specified by SEBI from time to time, the debenture trustee, on behalf of the debenture holders, may enter into inter-creditor agreements provided under the framework specified by the Reserve Bank of India.
- Monitoring security cover:** While the debt securities are secured to the tune of 100% of the principal and interest amount or as per the terms of offer document/information Memorandum, in favour of Debenture Trustee, it is the duty of the Debenture Trustee to monitor that the security is maintained, however, the recovery of 100% of the amount shall depend on the market scenario prevalent at the time of enforcement of the security.
- Asset cover for listed non-convertible debt securities:** In respect of its listed non-convertible debt securities, the listed entity shall maintain 100% asset cover or asset cover as per the terms of offer document/Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.
- Notice for roll-over of debt securities:** Where the issuer desires to roll-over the debt securities issued by it, it shall do so only upon passing of a special resolution of holders of such securities and give fifteen (15) days' notice of the proposed roll over to them. Earlier requirement was of twenty one (21) days' notice.
- Creation of security:** The issuer shall give an undertaking in the Information Memorandum that the assets on which charge is created are free from any encumbrances and in cases where the assets are already charged to secure a debt, the permission or consent to create a second or pari-passu charge on the assets of the issuer has been obtained from the earlier creditor.

10. **Recovery expense fund to be created:** The issuer is obligated to create a recovery expense fund in the manner as maybe specified by SEBI from time to time and inform the Debenture Trustee about the same.
11. **Additional disclosures:** The issuer and merchant banker to provide for following additional disclosures:
- Creation of recovery expense fund - Details and purpose of the recovery expense fund
 - All covenants of the issue (including side letters, accelerated payment clause, etc.)
 - Event of Default (including manner of voting /conditions of joining Inter Creditor Agreement)
 - Conditions for breach of covenants (as specified in Debenture Trust Deed)
 - Description regarding Security (where applicable) including type of security (movable/immovable/tangible etc.), type of charge (pledge/ hypothecation/ mortgage etc.), date of creation of security/ likely date of creation of security, minimum security cover, revaluation, replacement of security, interest to the debenture holder over and above the coupon rate as specified in the Trust Deed and disclosed in the Offer Document/ Information Memorandum
 - Risk factors pertaining to the issue
12. **Intimation to debenture trustee:** The listed entity to promptly forward following to debenture trustee:
- a half-yearly certificate regarding maintenance of hundred percent asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, in respect of listed non-convertible debt securities, by the statutory auditor, along with the half-yearly financial results, Provided that the submission of half yearly certificate is not applicable where bonds are secured by a Government guarantee;
 - all covenants of the issue (including side letters, accelerated payment clause, etc.).

B. MANDATORY FORENSIC AUDIT DISCLOSURE

Additionally, SEBI has also mandated disclosure of fact of initiation of forensic audit (by whatever name called) along-with name of entity initiating the audit and reasons for the same, if available and final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) on receipt by the listed entity along with comments of the management, if any.

Aforementioned changes have been effected vide (a) SEBI (Debenture Trustees) (Amendment) Regulations, 2020, dated October 8, 2020 ([available here](#)), (b) SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2020, dated October 8, 2020 ([available here](#)), and (c) SEBI (Issue and Listing of Debt Securities) (Amendment) Regulations, 2020, dated October 8, 2020 ([available here](#)).

We trust that you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com

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