

Guidelines applicable for Trustees who provide services to a Market Institution, Market Intermediary, Listed Public Company or a Collective Investment Scheme

General interpretation

1. The words and terms defined in the Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021 shall unless the context requires otherwise have the same meaning assigned to it in the said Act:

“Debentures” shall have the same meaning as set out in the Companies Act No. 07 of 2007 (as amended);

“Issuer” means the entity which is intending to issue or has issued Debentures through a prospectus or any other similar document to the public;

“Trustee in respect of a Debenture Issue” means a person appointed as Trustee in respect of a Debenture issued by a company for a public offer of such Debentures and falls within the definition of a Supplementary Service Provider under the SEC Act;

“Trustee of a Scheme” means a person appointed as Trustee in the instrument creating a Scheme in accordance with the provisions of the Collective Investment Scheme Code of 2022 and falls within the definition of a Supplementary Service Provider under the SEC Act.

Applicability

2. These guidelines shall apply to a Trustee of a Scheme and a Trustee in respect of a Debenture Issue.
3. A Trustee of a Scheme shall in addition to these guidelines, comply with the provisions morefully set out in the Collective Investment Scheme Code of 2022 published by Government Gazette (Extraordinary) No. 2278/27 on 7th May 2022.
4. Every Trustee shall comply with:
 - (a) the guidelines set out herein and any amendments thereto;
 - (b) provisions of the SEC Act which may be relevant and/or applicable to a Trustee; and
 - (c) directives issued from time to time by the Commission.

5. The Commission may waive compliance with any of the guidelines set out herein in circumstances deemed appropriate.

Requirements and qualifications for a Trustee in respect of a Debenture Issue

6. A person providing services as a Trustee in respect of a Debenture Issue shall be a Commercial Bank licensed by the Central Bank of Sri Lanka.

7. A Trustee shall be a person independent of the Issuer and shall not have close links with the Issuer where such Issuer has the power to exercise a dominant influence or control over the Trustee.

8. For the purposes of Clause 7, 'close links' shall mean a situation in which two (2) or more persons are linked through ownership, directly or indirectly or by way of control, of twenty percent (20%) or more of the voting rights or capital.

Duties of a Trustee in respect of Debenture Issue

9. A Trustee in respect of a Debenture Issue shall:

(a) act with due diligence and ensure that it safeguards the rights and interests of holders of Debentures;

(b) ensure that it has the ability and powers to perform all duties as set out in the trust deed, these guidelines and any directives issued by the Commission from time to time;

(c) ensure that any collateral upon which the Debentures are secured are safeguarded in a manner that will not prejudice the rights and interests of holders of Debentures;

(d) act impartially between holders of Debentures;

(e) not profit by its position as Trustee except through the payment of fees permitted by the trust deed;

(f) avoid conflicts of interest between itself and the Issuer;

(g) maintain proper records with regard to the Debentures;

(h) advise the Issuer immediately in relation to matters arising with regard to the Debentures if deemed necessary for the protection of holders of Debentures; and

(i) comply with such other requirements as may be specified by the Commission in respect of any particular offer or transaction relating to Debentures from time to time.

Procedure to be followed by a Trustee in respect of a Debenture Issue in

10. Where the Trustee in respect of a Debenture Issue falling within the purview of the SEC Act, is of the opinion that the assets of the Issuer or any of its guarantees (whether by way of security or otherwise) for the Debentures are insufficient

a situation where it is unable to service the debt, pay interest or the coupon rate

or is likely to become insufficient to discharge the principal debt and any interest or coupon rate due thereon, as and when it falls due, the Trustee –

- (a) shall inform the Commission immediately giving details as to the steps the Trustee will take or any restrictions that the Trustee will impose on the Issuer in terms of the trust deed for the protection of the interests of holders of Debentures;
- (b) may in appropriate circumstances apply to a court of competent jurisdiction for an appropriate order to safeguard the interests of Debenture holders in terms of the trust deed;
- (c) shall convene a meeting of Debenture holders for the purpose of placing before them such information relating to their interests and propose measures that maybe required to protect their interests;
- (d) shall prepare a report at the end of a period of three (3) months setting out in detail all matters that may adversely affect the security or the interests of holders of Debentures which shall include but are not limited to the following;
 - (i) whether the borrowing limits of the Issuer have been exceeded;
 - (ii) whether the Issuer and any of its guarantors have observed and performed the covenants binding upon them respectively by or pursuant to the Debentures or the trust deed;
 - (iii) whether any event has occurred which has rendered the Debentures to become unenforceable or triggers any provision of the trust deed and if so, particulars of that event;
 - (iv) whether any circumstance affecting the Issuer, its subsidiary or guarantor has occurred which materially affects any security or charge created by the Debentures or any trust deed and if so, particulars of those circumstances;

(v) whether any substantial change in the nature of the business of the Issuer or its subsidiary or guarantor has occurred since the Debentures were first issued which has not been previously reported, and if so, particulars or details of such change;

(vi) in instances where the Issuer has deposited or lent money to or has assumed any liability of an entity which is related to the Issuer, particulars in detail of the total amounts so deposited or lent and the extent of any liability assumed during the period relevant to the report and the total amounts owing to the Issuer in respect of the money so deposited or lent and the extent of the liability assumed as at the end of the period relevant to the report.

11. The report prepared in accordance with subparagraph (d) above shall be signed by two (2) directors on behalf of the Trustee and be lodged with the Commission and the Issuer.

Submission of information to the Commission

12. A Trustee in respect of a Debenture Issue and a Trustee of a Scheme shall submit any information, clarification or explanation in relation to services rendered by it to a market institution, market intermediary, listed public company or a collective investment scheme upon request of the Commission as provided for in Section 169 (1) of the SEC Act.

13. The Commission may issue a directive to a Trustee in respect of a Debenture Issue and a Trustee of a Scheme to take any corrective action as determined by the Commission where the Commission is of the view that the services rendered by a Trustee to a market institution, market intermediary, listed public company or a collective investment scheme is likely to cause harm to the interests of any investor as provided for in Section 169 (2) of the SEC Act.

Replacement of the Trustee in respect of a Debenture Issue

14. A Trustee in respect of a Debenture Issue shall not voluntarily terminate its appointment unless the termination is effective at the same time as the commencement of the appointment of a succeeding Trustee.

15. The Commission shall be notified immediately of –
(a) the voluntary termination by the outgoing Trustee; and

(b) the commencement of a new appointment by the incoming Trustee.

**Liability of a Trustee
in respect of a
Debenture Issue**

16. Any provision contained in the trust deed relating to an issue of Debentures shall be void in so far as it has the effect of exempting the Trustee thereof or indemnifying it against liability for breach of trust.