

FAQs on Debenture Trustee

1. What is a Debenture?

A debenture is an instrument of debt executed by the company acknowledging its obligation to repay the sum at a specified rate and also carrying an interest. It is one of the methods of raising the loan capital of the company. A debenture is thus like a certificate of loan or a loan bond evidencing the fact that the company is liable to pay a specified amount with interest and although the money raised by the debentures becomes a part of the company's capital structure, it does not become share capital.

2. Who is a Debenture Trustee?

A debenture trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate

3. Who can be appointed a Debenture Trustee?

To act as debenture trustee, the entity should either be a scheduled bank carrying on commercial activity, a public financial institution, an insurance company, or a body corporate. The entity should be registered with SEBI to act as a debenture trustee.

4. How to apply for registration as a Debenture Trustee ?

For registration as a Debenture Trustee, an applicant is required to pay a non-refundable application fee of Rs. 50,000/- by way of demand draft drawn in favour of 'Securities and Exchange Board of India', payable at Mumbai. The application in Form A along with additional information Sheet (AIS) (Form A and additional information sheet available on SEBI Website : <http://www.sebi.gov.in/sebiweb/home/detail/31043/no/Debenture-Trustee-How-to-apply>) shall be submitted to the Division Chief at the below mentioned address :

**Market Intermediaries Regulation And Supervision Department - 5
Securities and Exchange Board of India
SEBI Bhavan, 3rd Floor A Wing,
Plot No. C4-A, 'G' Block,
Bandra-Kurla Complex,
Bandra (E), Mumbai - 400 051.**

5. Is there any registration fee to be paid by the Debenture Trustee?

Fees for the initial as well as permanent registration is to be paid by the applicant. The break-up of fee is given below:

Type	Fees prescribed in Debenture Trustee Regulations	Tenure (years)
Initial Registration	₹ 20,00,000/-	5
Permanent Registration	₹ 9,00,000/-	After completion of initial period of 5 years.

6. How long does the certificate of registration remain valid?

The certificate of initial registration remains valid for five years. The Debenture Trustee has to apply for permanent registration certificate to SEBI, 3 months before the expiry of the validity of the certificate, if it wishes to continue as a registered Debenture Trustee. The applicant has to pay a sum of ₹ 9,00,000/- every 3 years subsequent to the grant of permanent registration to keep the registration in force.

7. What is the role of Debenture Trustee?

Duties of the Debenture Trustee include:

- (a) Call for periodical reports from the body corporate, i.e., issuer of debentures.
- (b) Take possession of trust property in accordance with the provisions of the trust deed.
- (c) Enforce security in the interest of the debenture holders.
- (d) Ensure on a continuous basis that the property charged to the debenture 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 except those which are specifically agreed with the debenture trustee.
- (e) 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.

(f) 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.

(g) 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.

(h) Inform the Board immediately of any breach of trust deed or provision of any law.

(i) Appoint a nominee director on the board of the body corporate when required.

8. When can a nominee director be appointed?

A nominee director can be appointed 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.

9. Can a debenture issue be transferred? If so, when can a debenture trustee relinquish his assignments?

Yes, a debenture issue can be transferred.

A debenture trustee can relinquish its assignments in respect of the debenture issue of any body corporate only when another debenture trustee is appointed in its place by the body corporate.

10. What are the contents of the debenture trustee agreement?

Debenture Trustee Agreement should include the following:

(a) Preamble,

(b) Description of the Instrument,

(c) Details of charged securities

(i) Nature of charge,

(ii) Examination of title,

(iii) Rank of the charge, i.e., whether first, second, or pari passu charge, etc.

(iv) Charging of future assets,

- (v) Time limit for creation of charge,
- (vi) Minimum security cover required,
- (vii) Valuation of security,
- (viii) Circumstances in which security becomes enforceable,
- (ix) Method and preservation of secured property etc.
- (d) Events of default.
- (e) Rights of Debenture Trustee.
- (f) Obligations of the body corporate (i.e., Issuer of debentures).

Apart from the above, the Agreement will have to include the following provisions:

- (i) Definition and Interpretation,
- (ii) Appointment of Debenture trustee and its powers
- (iii) Remuneration of Debenture Trustee,
- (iv) Appointment of debenture Trustee as Attorney,
- (v) Negative pledge i.e. not to create additional encumbrances on the secured asset,
- (vi) Description of Events of Default, which may arise due to Non-payment to debenture holders, breach of any undertaking, avoidance or repudiation, etc.
- (vii) Notice of exercise of trustee powers,
- (viii) Indemnity of trustee,
- (x) Retirement of trustee & appointment of new trustee,
- (xi) Reimbursement of expenses incurred by the trustee,
- (xii) General covenants etc.

11. What is the role of debenture trustee with respect to creation or enforcing the security in a debenture issue?

Creation of security means mortgaging the property in favor of Debenture Trustee for the benefit of debenture holders. This is an incidence of ownership of

property and creation of security has to be done by the owner of the property. However, the debenture holders are beneficiaries and they have no access to mortgaged property. The Debenture Trustee holds the secured property on behalf of issuer of security and for benefit of debenture holders. In the event of default by the issuer of security, the Debenture Trustee will have the power and authority to bring the secured property to sale following the procedure in the Transfer of Property Act and the proceeds of sale will have to be applied to redeem the debentures.

12. Is appointment of Debenture Trustee compulsory?

As per the provisions of companies act, appointment of debenture trustee is mandatory. However, issue of debentures / bonds with maturity of 18 months or less are exempt from the requirement of appointment of Trustee.

(a) In case of debenture / bonds with maturity beyond 18 months, a trustee or an agent, by whatever name called shall be appointed to take care of the interest of debenture / bond holders irrespective of whether or not the debentures / bonds are secured.

(b) Where the debentures / bonds are unsecured, these are treated as fixed deposits, if received from individual investors

13. Who pays to the Debenture Trustee?

In India, the issuer pays to the Debenture Trustee.

14. Who regulates Debenture Trustee?

In India, Debenture Trustees are regulated by SEBI. The SEBI (Debenture Trustees) Regulations, 1993 govern the Debenture Trustees and provide for eligibility criteria for registration of Debenture Trustees, monitoring and review, registration, Code of Conduct, procedure of action in case of defaults, avoidance of conflict of interest and inspection of Debenture Trustees by SEBI, amongst other things.

Public issues and issues proposed to be listed are covered under the said regulations.

15. Can a Debenture Trustee act for issue of debentures of an associate?

A debenture trustee cannot act for any issue of debentures of its associate or if it has lent and the loan is not yet fully repaid or is proposing to lend money to the body corporate:

16. Who is responsible for creation of Debenture Redemption Reserve?

It is the obligation of body corporate to create Debenture Redemption Reserve as per SEBI DIP guidelines and SEBI (Debenture Trustees) Regulations, 1993. DT has to ensure that the issuer furnishes an auditor's certificate to it for the same.
