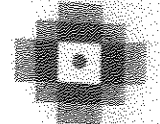


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IL&FS  
Trust  
Company  
Limited

November 26, 2010

Securities & Exchange Board of India (SEBI)  
Corporate Finance Department  
Division of Corporate Restructuring  
SEBI Bhavan  
Bandra Kuria Complex  
Bandra (East)  
Mumbai 400 051

Re : Request for Interpretive Letter under the SEBI  
Informal Guidance Scheme, 2003

Sub: Applicability of SEBI (Substantial Acquisition of Shares & Takeover)  
Regulations, 1997 and SEBI (Issue of Capital and Disclosure Requirements)  
Regulations, 2009 as amended from time to time to a Trustee

I. Introduction:

- (1) IL&FS Trust Company Limited ('ITCL' or the 'Company') is the only integrated trusteeship company in the country which provides a complete range of fiduciary trusteeship services to banks, financial institutions, corporate as well as to non corporate entities like Non Government Organizations, High Net worth Individual ('HNI') families etc.
- (2) ITCL is an ISO 9001:2008 Certified Company and is a registered intermediary with SEBI for its Debenture Trusteeship services. (Copy of the registration certificate is enclosed as **Annexure - D**) ITCL is a professionally managed company with its working closely monitored by its Board of Directors, which comprise of 2/3<sup>rd</sup> Independent Directors thus ensuring objectivity, transparency and fairness in its services.
- (3) The core business activity of ITCL is acting as a Trustee for Bonds, Debentures, Consortium Lending, Venture Capital Fund, Private Equity Fund, Securitization Trusts, Not for Profit Trusts like Charitable Trust, Employee Welfare Trust and Employee Stock Option Trusts for Banks, Financial Institutions and Corporate as well as Private Family Trust for HNI families.
- (4) In the course of its varied Corporate Trusteeship operations, ITCL in its capacity as Trustee on behalf of banks and financial institutions accepts pledge of shares of listed companies by way of security offered against the loans granted by such banks and financial institutions including Non Banking Financial Companies (NBFCs).

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Phone : 91-22-2653 3333 Fax : 91-22-2653 3297

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Phone : 91-11-4657 7591 / 92 Fax : 91-11-4657 7590

II - IL&FS Trust Company Limited, IL & FS Constantia, 3rd Floor, 11 Dr. U. N. Brahmachari Street, Kolkata 700 017, INDIA  
Phone : 91-33-2280 7359-63 Fax : 91-33-2283 5003

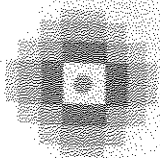




## II. Background:

### (A) Pledge of Listed Securities in favour of ITCL in its fiduciary capacity of Trustee:

- (1) While discharging its duties as a Trustee on behalf of banks and financial institutions, instances have arisen where the scrip of a specific listed company is pledged in ITCL's favour as Trustee. There may be instances where the shares of a listed company may have to be pledged in favour of ITCL for securing payment of loan which is subject to lock in requirements.
- (2) Regulation 7(1) of SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997, as amended from time to time [hereinafter referred to as the '**Takeover Regulations**'] requires every acquirer acquiring shares or voting rights of a listed company in excess of a threshold limit, to disclose the same to the company and to the stock exchange where shares of the company are listed. For the purposes of sub-regulations 7 (1) and (1A), Explanation to the said Regulations state that the term 'acquirer' shall include a pledgee, other than a bank or a financial institution, and such pledgee shall make the required disclosure to the target company and the stock exchange.
- (3) Regulation 10 of the Takeover Regulations further provides that no acquirer shall acquire shares or voting rights which (taken together with shares or voting right, if any, held by him or by persons acting in concert), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations
- (4) The term "acquirer" as defined in Regulation 2(1)(b) of the Takeover Regulations means any person who directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer
- (5) Regulation 3(1) of the Takeover Regulations further provides that nothing contained inter alia in Regulation 10 shall apply to acquisition of shares in the ordinary course of business by public financial institutions on their own account (Regulation 3(1)(f)(iii)) or by banks and public financial institutions as pledgees (Regulation 3(1)(f)(iv))
- (6) The term "public financial institution" as defined in Regulation 2(1)(i) of the Takeover Regulations means a public financial institution as defined in Section 4A of the Companies Act, 1956.
- (7) Therefore, banks and public financial institutions as Pledgees both prior to invocation and post invocation of Pledge due to an enforcement action are exempt from open offer requirements under the provisions of Regulation 10 of the Takeover Regulations.
- (8) Regulation 36 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time [hereinafter referred to as the



ITCL

'ICDR Regulations'] requires that in a public issue, the specified securities held by promoters shall be locked-in viz :

(a) as minimum promoters' contribution for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later

OR

(b) for a period of period of one year in case of promoters' holding in excess of minimum promoters' contribution.

(9) Regulation 39 of the ICDR Regulations requires specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution, provided that :

(a) the specified securities are locked-in in terms of clause (a) of Regulation 36 of ICDR Regulations (stated above) and the loan has been granted by such bank or institution for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the terms of sanction of the loan;

(b) if the specified securities are locked-in in terms of clause (b) of regulation 36 (stated above) and the pledge of specified securities is one of the terms of sanction of the loan.

### III. Our Interpretation :

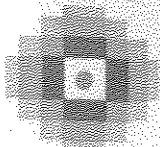
(1) The varied transactions are undertaken by ITCL in the ordinary course of its business activities.

(2) They are not entered into with the purpose of substantial acquisition of shares, voting rights or control of the target company or with any prior agreement or understanding to do so.

(3) The core business activity of the ITCL is to act as a Trustee under a Trust Arrangement for the benefit of its clients. Even during invocation of securities, the voting rights in respect of securities pledged with ITCL are exercisable only on instructions of the Clients or Ultimate beneficiaries.

(4) The applicability of regulation 10 of the Takeover Code on creation of pledge of shares of listed Company has been extensively dealt by the Securities & Appellate Tribunal in the case of Ch. Kiron Margadarsi Vs Adjudicating Officer, SEBI [2001] 33 SCL 349 (SAT-MUM). The SAT observed in this case that the mere act of acquisition of shares or voting rights does not attract the provision of regulation 10 of takeover Code unless the acquirer is in a position to exercise the voting rights in the company. Extract of the SAT observations are reproduced below :

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*"It is not the manner in which shares are acquired. It is the effect that triggers action. If acquisition has no impact on the voting rights, then Regulation 10 is not attracted"*

- (5) Further, it is well established legal principle that a trustee company holding a trust property including (pledged shares) does not enjoy unfettered rights in the trust property as ordinarily enjoyed by an owner in his own property. The Trustee becomes the owner of the Trust Property for the purpose of **effectively executing or administering the trust for the benefit of the beneficiaries and for due administration thereof but not for any other purpose.**
- (6) **Economic interest derived by ITCL would be only the fees** received from the beneficiaries / settler for acting as trustee rather than ownership of such securities or exercise of voting rights in respect thereof.
- (7) The applicability of Regulation 39 of the ICDR Regulations on Pledge of locked-in specified securities should also be extended to ITCL in capacity as Trustee and accordingly specified securities held by promoters and locked-in should be entitled to be pledged with a Trustee where the scheduled commercial bank or public financial institution is the beneficiary.

This is because there may be instances where a scheduled commercial bank or public financial institution is a lender for a term loan and the promoters of borrower company would like to pledge securities held by them as collateral security for loan granted by such bank or institution

- (8) Illustration to the aforesaid points are as under :

Company X – Lender lends a Sum of Rs. 100 Crores to  
Company Y – Borrower & Listed Company.

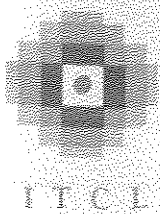
Company Y is also a financial institution.

ITCL is acting as Trustee, appointed by Company Y. To secure the loan of Rs. 100 Crores, Company Y pledges its shares in favour of ITCL in capacity as Trustee to the extent of 7% of its paid up capital.

Query 1 : Will ITCL need to make disclosures under Regulation 7 of Takeover Regulations ?

Query 2 : In the aforesaid scenario, if Company Y was neither a bank nor a financial institution, will ITCL still need to make disclosures under Regulation 7 of Takeover Regulations ?

Query 3 : In the aforesaid scenario, if Company Y was a public financial institution, for securing the loan, can the promoters of Company Y pledge their shares with ITCL which are in the promoters lock- in period ?



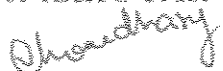
IV. We request your confirmation on the following by way of an interpretive letter under the SEBI Informal Guidance Scheme, 2003 (the Scheme):

- (a) Since the Regulations provide specific exemptions from making disclosures under the Explanation to Regulation 7 (1) and (1A) to banks and financial institutions as pledgee, it is our understanding that ITCL in its capacity as Trustee being a Pledgee for and on behalf of such banks and financial institutions will not be considered as an "acquirer" and would also be exempt for the purpose of making requisite disclosures under Regulation 7(1) and (1A) of the Regulations, for reasons as detailed in Section II(A)(2) above.
- (b) Since the Regulations provide specific exemptions under Regulation 3(1) to Banks and Public Financial Institutions as Pledgee or on their own account for the purpose of making public announcement under Regulation 10, it is our understanding that ITCL in its capacity as Trustee being a Pledgee for and on behalf of such banks and Public Financial Institutions will not be considered as an "acquirer" and would also be exempt for the purpose of making public announcement under Regulation 10 of the Regulations both before and after invocation of such Pledge due to an enforcement action.
- (c) Further, in transactions where the shares are pledged in ITCL's favour in capacity as Trustee by that company or financial institution which is not exempt from making disclosures under the Takeover Code, in such scenarios, ITCL would still not be required to make the disclosure because direct voting rights does not pass to ITCL as it still remains with the beneficiary and, ITCL has no economic interest in the transaction to the extent of Trusteeship fees.
- (d) Lastly, in transactions involving promoters shares that are subject to lock in requirements as per ICDR Regulations can be pledged in ITCL's favour in capacity as Trustee since the commercial bank or public financial institution would be the ultimate beneficiary

We enclose herewith a sum of Rs.25,000/- vide Pay Order No.314417 dated 24-11-2010 drawn on Axis Bank in favour of SEBI payable under the said Scheme.

We request you to treat this letter as confidential for a period of 90 days in terms of Clause 11(a) of the Scheme.

Sincerely,  
For IL&FS Trust Company Ltd

  
Vivek Choudhary  
Compliance Officer

Encl: As above