



भारतीय प्रतिभूति  
और विनियम बोर्ड  
Securities and Exchange  
Board of India

CHIEF GENERAL MANAGER  
CORPORATION FINANCE DEPARTMENT  
DIVISION OF CORPORATE RESTRUCTURING

CFD/DCR/IG/SKM/8243/12  
April 12, 2012

IL&FS Trust Company Limited,  
The IL&FS Financial Centre, Plot C-22,  
G Block, Bandra Kuria Complex,  
Bandra (East),  
Mumbai - 400 051

Dear Sir,

**Sub:** Request for "Interpretive Letter" under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 regarding applicability of Securities and Exchange Board of India (Substantial Acquisition of Shares & Takeover) Regulations, 1997 (since repealed and substituted by "Securities and Exchange Board of India (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 to a Trustee.

1. This has reference to your letters dated November 26, 2010 and December 30, 2011 in the captioned matter.
2. You have, *inter alia*, represented as follows-
  - a. IL&FS Trust Company Limited (ITCL) is a registered intermediary with SEBI for its Debenture Trusteeship services. It provides a wide range of fiduciary trusteeship services to banks, financial institutions (FIs), corporate and non-corporate entities.
  - b. The core business activity of ITCL is acting as a Trustee for Bonds, Debentures, etc for banks, financial institutions, etc.
  - c. 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).
  - d. 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.

Page 1 of 4

सेबी भवन, फ्लॉट सं. सी 4-ए, "जी" ब्लॉक, बॉम्बे कुरीया कॉम्प्लेक्स, बॉम्बे (पूर्व), मुंबई - 400 051.  
दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर.एस.), 26449000 / 40459000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kuria Complex, Bandra (E), Mumbai - 400 051.  
Tel.: 2644 9950 / 4045 9950 (IVRS), 26449000 / 40459000 Fax: 2644 9019 to 2644 9022 Web: www.sebi.gov.in



अनुवर्ती:  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड  
**Securities and Exchange  
Board of India**

- e. Regulations provide specific exemptions from making disclosures under the Explanation to Regulation 7 (1) and (1A) to banks and financial institutions as pledgees.
  - f. 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 the Takeover Regulations.
  - g. The varied transactions are undertaken by ITCL in the ordinary course of its business activities.
  - h. 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.
  - i. 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.
  - j. 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.
3. In view of the above, you have sought interpretive guidance from SEBI on the following :-
- a. Since Takeover Regulations, 1997 provide specific exemptions from making disclosures under the Explanation to Regulation 7 (1) and (1A) to banks and financial institutions as pledgee, whether ITCL in its capacity as a 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 Regulations 7(1) and (1A) of the Regulations.
  - b. Since the Takeover Regulations, 1997 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, whether 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.



अनुवर्ती:  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड  
*Securities and Exchange  
Board of India*

- 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 right 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.
4. We have considered the submission made by you in your letters under reference and without necessarily agreeing with your analysis, our views on the issues are as under.
- a. As submitted by you, ITCL is a Debenture Trustee and there is no express provision in either the erstwhile or present Takeover Regulations providing exemption to 'Debenture Trustees' acting as custodian/agent for the pledged shares on behalf of the lenders. Therefore, in the absence of such provisions, you may be required to be governed by the relevant provisions of the Takeover Regulations, 1997 and Takeover Regulations, 2011, as the case may be.
  - b. With regard to your query relating to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, it appears that you have sought exemption from requirements of Regulation 39 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and not interpretation thereof. Therefore, we are not in a position to respond to the query in this regard.
5. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the questions referred.
6. You may also note that the above views are expressed only with respect to the clarification sought in your letter under reference with respect to Securities and Exchange Board of India (Substantial Acquisition of Shares & Takeover) Regulations, 1997, Securities and Exchange Board of India (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and do not affect the applicability of any other law or requirements of any other SEBI



अनुवर्ती:  
Continuation :

भारतीय प्रतिभूति  
और विनियम बोर्ड  
*Securities and Exchange  
Board of India*

Regulations, Guidelines and circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,

V S Sundaresan