

REGULATIONS OF INTEREST TO FOREIGN INVESTORS



CVM INSTRUction 28 of november 23, 1983.

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Regulates the exercise of the activity of Debenture Holders' Trustee for Debenture Holders.

The Full Board of the BRAZILIAN SECURITIES COMMISSION makes public that, in a meeting held on the date hereof and based on articles 4 and 8 of Law No. 6.385 of December 7, 1976 and in the light of the provisions of Chapter V of Law No. 6.404 of December 15, 1976,

RESOLVED:

APPOINTMENT AND REPLACEMENT OF DEBENTURE HOLDERS' TRUSTEE

Art. 1 - The appointment of a debenture holders' trustee to represent the joint ownership of debentures will obligatorily appear in the public deed of issuance of debentures, as well as his acceptance for the exercise of the duties.

Art. 2 - The deed of issuance shall expressly establish the conditions for the replacement of the debenture holders' trustee, in case of absence and temporary impediments, resignation, death or any other case of vacancy and may provide for the replacement for all or some of these hypotheses.

Paragraph 1 - Under no circumstance may the position of debenture holders' trustee remain vacant for a period of more than (30) days, within which a general meeting of debenture holders must be held in order to select a new debenture holders' trustee.

Paragraph 2 - The general meeting referred to in the previous paragraph may be convened by the debenture holders' trustee that will be replaced, by the issuing company, by debenture holders representing at least ten per cent (10%) of the securities in circulation, or by the Brazilian Securities Commission ("*Comissão de Valores Mobiliários*" - CVM). If the general meeting is not held until eight (8) days before the expiry of the term mentioned in Paragraph 1, the issuing company will be charged with making the call.

Paragraph 3 - CVM may appoint a temporary substitute in case of vacancy.

Art. 3 - The debenture holders may, after the expiry of the term for distribution of debentures in the market, replace the debenture holders' trustee and appoint the possible substitute in a general meeting convened especially therefor.

Art. 4 - The replacement of the debenture holders' trustee is subject to prior notice to CVM and to its response about the fulfillment of the requirements prescribed in article 8 of this Instruction.

Art. 5 - The permanent replacement of the debenture holders' trustee must appear in the deed of issuance by means of an addendum, which shall be registered in the commercial registry and in the real estate registry in which the deed of issuance has been registered.

Art. 6 - The debenture holders' trustee takes office as from the date of the deed of issuance or the addendum providing for the replacement (article 5) and will remain in office until the actual replacement.

REQUIREMENTS

Art. 7 - Only the following may be appointed debenture holders' trustees:

I – natural persons who meet the requirements necessary to occupy a position in one of the company's management bodies; and

II – financial institutions that, having as their corporate objective the management or custody of goods pertaining to third parties, had been duly authorized by the Central Bank of Brazil, to exercise the duties of debenture holders' trustee.

• **Amended by CVM Instruction 123/90**

Art. 8 - In case of issuance of debentures intended for negotiation in the stock market, the debenture holders' trustee for the issuance or series of debentures must obligatorily be a financial institution whenever one of the following hypotheses occur:

I – the issuance is secured by a pledge; or

II – the issuance is in excess of the corporate capital, provided that the debenture is not subordinated.

Art. 9 - For purposes of obtaining the registry of the issuance and of approval of the addendum of the deed of issuance (article 5) at CVM, the following documents must be furnished, related to the debenture holders' trustee:

I – in case of a financial institution:

- a. proof of fulfillment of the requirements of item II of article 7;
- b. statement that the institution is not in any situation of conflict of interest provided for in article 10 hereof;

II – in case of natural persons, a statement from the agent that it is not prevented from exercising the duties:

- a. pursuant to any special law; or
- b. for having been condemned for any bankruptcy crimes, crime of prevarication, bribery, graft, embezzlement, against popular economy, public faith, ownership; or
- c. for any criminal penalty that prevents, even if in a temporary manner, the taking of public offices; or
- d. for having been declared incapacitated to occupy a position in the management of a publicly-held company by an act of CVM; or
- e. for having been declared incapacitated to exercise the position of manager or to occupy positions in advisory, tax or similar bodies in financial institutions by an act of the Central Bank of Brazil; or
- f. for being in a situation of conflict of interests in relation to the exercise of the duties, pursuant to the terms of article 10 hereof.

INCOMPATIBILITY AND RESTRICTIONS

Art. 10 – The following cannot be debenture holders' trustees:

I – natural persons or financial institutions:

- a. who or that already perform this duty in another issuance of the same company or in any associate, controlled, controlling company of the issuing company or any company pertaining to the same group;
- b. who or that occupy a position or performs duties, or carries out due diligence or assistance of any nature to the issuing company, its associate, controlled or controlling company, or any company pertaining to the same group;

- c. who or that is associated with another that already exercises the duty of debenture holders' trustee as provided for in the previous items;
- d. who or that, by any means, is placed in a situation of conflict of interest due to the exercise of the duty.

II – financial institution associated to the issuing company or to the entity that subscribes the issuance to distribute it in the market, and any company controlled thereby;

III – creditor, on any account, of the issuing company, or any company controlled thereby;

IV – financial institution:

- a. the managers of which have interest in the company;
- b. in which ten per cent (10%) or more of the voting capital pertains to the issuing company, its administrator or partner;
- c. that controls, either directly or indirectly, or that is directly or indirectly controlled by the issuing company.

REMUNERATION OF THE debenture holders' trustee

Art. 11 – The deed of issuance shall stipulate the amount, the form of adjustment, periodicity and conditions of the payment of the remuneration to be assigned to the debenture holders' trustee and his/her/its alternate, which remuneration shall be compatible with the responsibilities and the level of dedication and diligence required to exercise the function.

DUTIES OF THE debenture holders' trustee

Art. 12 – The following are duties of the debenture holders' trustee:

I – to protect the rights and interests of the debenture holders, devoting all care and diligence to perform his duties that any diligent and honest man usually devotes to manage his own property;

II – resign from the position in case of occurrence of conflict of interest or any other type of impediment;

III – carefully keep all accounting records, correspondence and other papers related to the performance of his duties;

IV – see to the observance, on behalf of the issuing company, of the limits of issuance prescribed by article 60 of Law No. 6.404/76, by virtue of the security interest offered;

V – check, at the time of the acceptance of the duty, the veracity of the information contained in the deed of issuance, taking all due care to cure any omissions, failures or defects known to him/her/it;

VI – take the necessary steps with the competent bodies, if these are not taken by the company, in order to register the deed of issuance and any addenda, curing any gaps and irregularities possibly ascertained; in this case, the register of deeds will notify the company's administration so that the latter furnishes to him/her any indications and documents required;

VII – follow-up the observance of the periodicity in the rendering of mandatory obligations, warning the debenture holders about the omissions and untruths of such information;

VIII – issue an opinion about the sufficiency of the information contained in proposals for modification of the conditions of the debentures;

IX – check the regularity of the offer of security interests, floating and personal guarantees, as well as the value of the goods offered as guarantee, with due regard for the maintenance of their sufficiency and enforceability;

X – examine the proposal for replacement of the goods offered as guarantee, when the

replacement is authorized by the deed of issuance, manifesting its express and reasonable agreement;

XI – notify the company to offer an additional guarantee, in case of deterioration or depreciation thereof;

XII – request, when it deems necessary for the faithful compliance with its duties, updated certificates issued by the civil distributors, by the Lower Public Treasury Courts, protest offices, Board of Conciliation and Judgment, Public Treasury Office of the principal place of business of the issuing company and, as well as of the place where the property mortgaged is located;

XIII – request, when it deems necessary, an extraordinary due diligence of the company;

XIV – examine, for as long as the right to convert debentures into shares may be exercised, any amendment to the issuing company's by-laws aiming at modifying the company's object or creating preferred shares or modifying the benefits of the existing ones, to the detriment of shares into which the debentures can be converted, being held responsible for either calling a general meeting of debenture holders to resolve on the matter or approve the proposed amendment, under the terms of paragraph 2 of article 57 of Law No. 6.404/76;

XV – call, whenever necessary, the general meeting of debenture holders by means of publication of a notice, at least three times, in the press bodies where the issuing company is to make its publications;

XVI – attend the general meeting of debenture holders in order to render any information requested;

XVII – prepare a report intended for the debenture holders, pursuant to article 68, paragraph 1, b of Law No. 6.404/76, which shall contain at least the following information:

- a. any omission or untruth of which the debenture holders' trustee is aware, contained in the information disclosed by the company as well as any default or delay in the mandatory rendering of information by the company;
- b. amendment to the by-laws occurred in the period;
- c. comments on the financial statements of the company, focusing on the economic, financial and capital structure rates of the company;
- d. status of the distribution or allocation of debentures in the market;
- e. redemption, amortization, conversion, renegotiation and payment of interest of the debentures made in the period, as well as acquisitions and sales of debentures made by the issuing company;
- f. formation and investments of the fund for amortization of debentures, as the case may be;
- g. follow-up of the allocation of funds raised through the issuance of debentures, according to the data obtained with the administrators of the issuing company;
- h. list of goods and values delivered to it to be administered;
- i. compliance with other obligations assumed by the company in the deed of issuance;
- j. statement about the sufficiency and enforceability of the guarantees of the debentures;
- k. statement about its qualification to continue to exercise the duties of a debenture holders' trustee.

XVIII – make the report addressed in the previous item available to the debenture holders no later than four (4) months after the termination of the company's financial year, at least in the following places:

- a. at the company's principal place of business;
- b. at its office or, in case of a financial institution, at the place it indicates;
- c. at CVM;
- d. at the Stock Markets, if applicable; and;
- e. at the institution that led the placement of debentures.

XIX – publish, in the press bodies where the issuing company is to make its publications, a notice informing the debenture holders that the report is available at the places indicated in item XVIII;

XX – keep updated the list of debenture holders and their addresses, by means of, among other things, contacts with the issuing company;

XXI – coordinate the drawing of debentures to be redeemed or repaid, canceling the certificates corresponding to the debentures redeemed;

XXII – administer the proceeds arising from the issuance of debentures in case of occurrence of the hypothesis provided for in paragraph 2 of article 60 of Law No. 6.404/76;

XXIII – inspect the compliance with the clauses of the deed of issuance, especially the ones imposing negative and positive covenants;

XXIV – notify the debenture holders, if possible separately, within at most ninety (90) days, about any default, by the company, on any obligations assumed in the deed of issuance, indicating the place in which it will furnish further clarifications to the interested parties. A communication with a similar content must be forwarded to:

- a. to CVM;
- b. the Stock Markets, if applicable;
- c. to the Central Bank of Brazil, if the institution has been authorized to operate by it.

Art. 13 – In case of default by the company, the debenture holders' trustee shall use all and any action to protect the rights or to defend the interests of the debenture holders, and shall:

I – declare, with due regard to the conditions established in the deed of issuance, the early maturity of the bonds and charge its principal and accessory obligations;

II – foreclose security interests, using the proceeds thereof for the payment of the debenture holders, in full or on a *pro rata* basis;

III - file a petition for the declaration of bankruptcy of the issuing company, in the event there are no security interests;

IV - take all the necessary actions in order to allow the debenture holders to receive their credits; and

V - represent the debenture holders in bankruptcy law suits, debt rehabilitation, intervention or extrajudicial liquidation of the issuing company.

Sole Paragraph - The debenture holders' trustee shall only be released from its liability for not adopting the measures contemplated in items I to IV if, having been called the debenture holders' meeting, the meeting authorizes the debenture holders' trustee in this regard by the resolution of the unanimity of the debentures in circulation. In case of V above, it shall be sufficient the resolution of the majority of the debentures in circulation."

Art. 14 – The expenses necessary to safeguard the rights and interests of the debenture holders described herein shall be borne by the issuing company.

Paragraph 1 – The debenture holders' trustee shall render accounts to the issuing company

about the expenses mentioned in the main section hereof in order to be immediately reimbursed.

Paragraph 2 – The credit of the debenture holders’ trustee for any expenses made to protect its rights and interests or realize credits of the debenture holders, that has not been paid off as provided for in the previous paragraph shall be added to debt of the issuing company and will enjoy the same guarantees of the debentures, with preference over them in the order of payment.

OTHER DUTIES OF THE debenture holders’ trustee

Art. 15 – The deed of issuance may also assign to the debenture holders’ trustee the following duties:

- I – to authenticate the debentures’ certificates;
- II – to administer the amortization funds, if any;
- III – to keep the goods offered as guarantee for the debentures;
- IV – to pay the interests, amortizations and redemption.

Sole Paragraph – The duties referred to in items III and IV may only be exercised by debenture holders’ trustees that are financial institutions.

CLAUSES RESTRICTING THE DUTIES, ASSIGNMENTS AND RESPONSIBILITIES OF THE debenture holders’ trustee

Art. 16 – Clauses of the deed of issuance that restrict the duties, assignments and responsibilities of the debenture holders’ trustee provided for in this Instruction shall be deemed not written.

CIVIL LIABILITY OF THE debenture holders’ trustee

Art. 17 – The debenture holders’ trustee is liable to the debenture holders for any losses caused to them when performing his/her/its duties.

INSPECTION BY CVM

Art. 18 - CVM may, on a preventive basis, suspend any debenture holders’ trustee and replace him if he fails to comply with his duties.

Art. 19 – Failure to comply with this Instruction constitute a gross infraction for purposes of paragraph 3, article 11 of Law No. 6.385/76.

FINAL PROVISION

Art. 20 – This Instruction becomes effective forty-five (45) days after its publication in the Official Gazette of the Federal Executive.

HERCULANO BORGES DA FONSECA

CHAIRMAN