



Companies Act 1985

1985 CHAPTER 6

PART V

SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

CHAPTER VIII

MISCELLANEOUS PROVISIONS ABOUT SHARES AND DEBENTURES

Share and debenture certificates, transfers and warrants

182 Nature, transfer and numbering of shares

- (1) The shares or other interest of any member in a company—
 - (a) are personal estate or, in Scotland, moveable property and are not in the nature of real estate or heritage,
 - (b) are transferable in manner provided by the company's articles, but subject to the Stock Transfer Act 1963 (which enables securities of certain descriptions to be transferred by a simplified process).
- (2) Each share in a company having a share capital shall be distinguished by its appropriate number; except that, if at any time all the issued shares in a company, or all the issued shares in it of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

183 Transfer and registration

- (1) It is not lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to it, or the transfer is an exempt transfer within the Stock Transfer Act 1982.

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This applies notwithstanding anything in the company's articles.

- (2) Subsection (1) does not prejudice any power of the company to register as shareholder or debenture holder a person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.
- (3) A transfer of the share or other interest of a deceased member of a company made by his personal representative, although' the personal representative is not himself a member of the company, is as valid as if he had been such a member at the time of the execution of the instrument of transfer.
- (4) On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.
- (5) If a company refuses to register a transfer of shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.
- (6) If default is made in complying with subsection (5), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

184 Certification of transfers

- (1) The certification by a company of any instrument of transfer of any shares in, or debentures of, the company is to be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on their face show a prima facie title to the shares or debentures in the transferor named in the instrument. However, the certification is not to be taken as a representation that the transferor has any title to the shares or debentures.
- (2) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to him as if the certification had been made fraudulently.
- (3) For purposes of this section—
 - (a) an instrument of transfer is deemed certificated if it bears the words "certificate lodged" (or words to the like effect);
 - (b) the certification of an instrument of transfer is deemed made by a company if—
 - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf, and
 - (ii) the certification is signed by a person authorised to certificate transfers on the company's behalf or by an officer or servant either of the company or of a body corporate so authorised;
 - (c) a certification is deemed signed by a person if—
 - (i) it purports to be authenticated by his signature or initials (whether handwritten or not), and
 - (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by a person authorised to use the signature

or initials for the purpose of certificating transfers on the company's behalf.

185 Duty of company as to issue of certificates

- (1) Subject to the following provisions, every company shall—
 - (a) within 2 months after the allotment of any of its shares, debentures or debenture stock, and
 - (b) within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company,
complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred (unless the conditions of issue of the shares, debentures or debenture stock otherwise provide).
- (2) For this purpose, "transfer" means a transfer duly stamped and otherwise valid, or an exempt transfer within the Stock Transfer Act 1982, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.
- (3) Subsection (1) does not apply in the case of a transfer to any person where, by virtue of regulations under section 3 of the Stock Transfer Act 1982, he is not entitled to a certificate or other document of or evidencing title in respect of the securities transferred; but if in such a case the transferee—
 - (a) subsequently becomes entitled to such a certificate or other document by virtue of any provision of those regulations, and
 - (b) gives notice in writing of that fact to the company,
this section has effect as if the reference in subsection (1)(b) to the date of the lodging of the transfer were a reference to the date of the notice.
- (4) A company of which shares or debentures are allotted or debenture stock is allotted to a stock exchange nominee, or with which a transfer is lodged for transferring any shares, debentures or debenture stock of the company, to a stock exchange nominee, is not required, in consequence of the allotment or the lodging of the transfer, to comply with subsection (1).

" Stock exchange nominee" means any person whom the Secretary of State designates, by order in a statutory instrument, as a nominee of The Stock Exchange for the purposes of this section.
- (5) If default is made in complying with subsection (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (6) If a company on which a notice has been served requiring it to make good any default in complying with subsection (1) fails to make good the default within 10 days after service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, exercise the power of the following subsection.
- (7) The court may make an order directing the company and any officer of it to make good the default within such time as may be specified in the order; and the order may provide that all costs of and incidental to the application shall be borne by the company or by an officer of it responsible for the default.

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186 Certificate to be evidence of title

A certificate, under the common seal of the company or the seal kept by the company by virtue of section 40, specifying any shares held by a member, is prima facie evidence of his title to the shares.

187 Evidence of grant of probate or confirmation as executor

The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company as sufficient evidence of the grant.

This has effect notwithstanding anything in the company's articles.

188 Issue and effect of share warrant to bearer

- (1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares specified in it, and may provide (by coupons or otherwise) for the payment of the future dividends on the shares included in the warrant
- (2) Such a warrant is termed a "share warrant" and entitles the bearer to the shares specified in it; and the shares may be transferred by delivery of the warrant.

189 Offences in connection with share warrants (Scotland)

- (1) If in Scotland a person—
 - (a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or
 - (b) by means of any such forged or altered share warrant, coupon, or document purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered ;

he is on conviction thereof liable to imprisonment or a fine, or both.
- (2) If in Scotland a person without lawful authority or excuse (proof whereof lies on him) —
 - (a) engraves or makes on any plate, wood, stone, or other material, any share warrant or coupon purporting to be—
 - (i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or
 - (ii) a blank share warrant or coupon so issued or made; or
 - (iii) a part of such a share warrant or coupon; or
 - (b) uses any such plate, wood, stone, or other material, for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively ; or
 - (c) knowingly has in his custody or possession any such plate, wood, stone, or other material;

he is on conviction thereof liable to imprisonment or a fine, or both.

Debentures

190 Register of debenture holders

- (1) A company registered in England and Wales shall not keep in Scotland any register of holders of debentures of the company or any duplicate of any such register or part of any such register which is kept outside Great Britain.
- (2) A company registered in Scotland shall not keep in England and Wales any such register or duplicate as above-mentioned.
- (3) Neither a register of holders of debentures of a company nor a duplicate of any such register or part of any such register which is kept outside Great Britain shall be kept in England and Wales (in the case of a company registered in England and Wales) or in Scotland (in the case of a company registered in Scotland) elsewhere than—
 - (a) at the company's registered office; or
 - (b) at any office of the company at which the work of making it up is done ; or
 - (c) if the company arranges with some other person for the making up of the register or duplicate to be undertaken on its behalf by that other person, at the office of that other person at which the work is done.
- (4) Where a company keeps (in England and Wales or in Scotland, as the case may be) both such a register and such a duplicate, it shall keep them at the same place.
- (5) Every company which keeps any such register or duplicate in England and Wales or Scotland shall send to the registrar of companies notice (in the prescribed form) of the place where the register or duplicate is kept and of any change in that place.
- (6) But a company is not bound to send notice under subsection (5) where the register or duplicate has, at all times since it came into existence, been kept at the company's registered office.

191 Right to inspect register

- (1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may impose in general meeting, so that not less than 2 hours in each day shall be allowed for inspection), be open to the inspection—
 - (a) of the registered holder of any such debentures or any holder of shares in the company without fee; and
 - (b) of any other person on payment of a fee of 5 pence or such less sum as may be prescribed by the company.
- (2) Any such registered holder of debentures or holder of shares, or any other person, may require a copy of the register of the holders of debentures of the company or any part of it, on payment of 10 pence (or such less sum as may be prescribed by the company) for every 100 words, or fractional part of 100 words, required to be copied.
- (3) A copy of any trust deed for securing an issue of debentures shall be forwarded to every holder of any such debentures at his request on payment—

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- (a) in the case of a printed trust deed, of 20 pence (or such less sum as may be prescribed by the company), or
 - (b) where the trust deed has not been printed, of 10 pence (or such less sum as may be so prescribed), for every 100 words, or fractional part of 100 words, required to be copied.
- (4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (5) Where a company is in default as above-mentioned, the court may by order compel an immediate inspection of the register or direct that the copies required be sent to the person requiring them.
- (6) For purposes of this section, a register is deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.
- (7) Liability incurred by a company from the making or deletion of an entry in its register of debenture holders, or from a failure to make or delete any such entry, is not enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of any such failure, the failure first occurred.

This is without prejudice to any lesser period of limitation.

192 Liability of trustees of debentures

- (1) Subject to this section, any provision contained—
- (a) in a trust deed for securing an issue of debentures, or
 - (b) in any contract with the holders of debentures secured by a trust deed,
- is void in so far as it would have the effect of exempting a trustee of the deed from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.
- (2) Subsection (1) does not invalidate—
- (a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release ; or
 - (b) any provision enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and
 - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Subsection (1) does not operate—
- (a) to invalidate any provision in force on 1st July 1948 so long as any person then entitled to the benefit of that provision or afterwards given the benefit of that provision under the following subsection remains a trustee of the deed in question ; or

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- (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.
- (4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given either—
- (a) to all trustees of the deed, present and future; or
 - (b) to any named trustees or proposed trustees of it,
- by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

193 Perpetual debentures

A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency (however remote), or on the expiration of a period (however long), any rule of equity to the contrary notwithstanding.

This applies to debentures whenever issued, and to deeds whenever executed.

194 Power to re-issue redeemed debentures

- (1) Where (at any time) a company has redeemed debentures previously issued, then—
- (a) unless provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company ; or
 - (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,
- the company has, and is deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.
- (2) On a re-issue of redeemed debentures, the person entitled to the debentures has, and is deemed always to have had, the same priorities as if the debentures had never been redeemed.
- (3) Where a company has (at any time) deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not deemed to have been redeemed by reason only of the company's account having ceased to be in debit while the debentures remained so deposited.
- (4) The re-issue of a debenture or the issue of another debenture in its place under the power which by this section is given to or deemed to be possessed by a company is to be treated as the issue of a new debenture for purposes of stamp duty : but it is not to be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

This applies whenever the issue or re-issue was made.

- (5) A person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any

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penalty in respect of it, unless he had notice (or, but for his negligence, might have discovered) that the debenture was not duly stamped; but in that case the company is liable to pay the proper stamp duty and penalty.

195 Contract to subscribe for debentures

A contract with a company to take up and pay for debentures of the company may be enforced by an order for specific performance.

196 Payment of debts out of assets subject to floating charge (England and Wales)

- (1) The following applies, in the case of a company registered in England and Wales, where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge.
- (2) If the company is not at the time in course of being wound up, the debts which in a winding up are, under the relevant provisions of Chapter V of Part XX relating to the preferential payments, to be paid in priority to all other debts shall be paid out of assets coming to the hands of the receiver or other person taking possession, in priority to any claims for principal or interest in respect of the debentures.
- (3) In the application of those provisions of Part XX, section 614 and Schedule 19 are to be read as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as mentioned in subsection (1) of this section.
- (4) The periods of time mentioned in those provisions of Part XX are to be reckoned from the date of the appointment of the receiver or possession being taken as above mentioned, as the case may be; and in Schedule 19 as it applies for the purposes of this section " the relevant date " means that date.
- (5) Payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

197 Debentures to bearer (Scotland)

Notwithstanding anything in the statute of the Scots Parliament of 1696, chapter 25, debentures to bearer issued in Scotland are valid and binding according to their terms.