



# Companies Act 1985

## 1985 CHAPTER 6

### PART V

#### SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

### CHAPTER VIII

#### MISCELLANEOUS PROVISIONS ABOUT SHARES AND DEBENTURES

#### *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.

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- (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—
  - (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
  - (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—

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- (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 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

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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.