



Companies Act 2006

2006 CHAPTER 46

PART 19

DEBENTURES

Supplementary provisions

749 Right of debenture holder to copy of deed

- (1) Any holder of debentures of a company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any trust deed for securing the debentures.
- (2) If default is made in complying with this section, an offence is committed by every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) In the case of any such default the court may direct that the copy required be sent to the person requiring it.

750 Liability of trustees of debentures

- (1) Any provision contained in—
 - (a) a trust deed for securing an issue of debentures, or
 - (b) 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—

Status: This is the original version (as it was originally enacted).

- (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;
 - (b) any provision enabling such a release to be given—
 - (i) on being agreed to by a majority of not less than 75% 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) This section is subject to section 751 (saving for certain older provisions).

751 Liability of trustees of debentures: saving for certain older provisions

- (1) Section 750 (liability of trustees of debentures) does not operate—
- (a) to invalidate any provision in force on the relevant date so long as any person—
 - (i) then entitled to the benefit of the provision, or
 - (ii) afterwards given the benefit of the provision under subsection (3) below,
 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.
- (2) The relevant date for this purpose is—
- (a) 1st July 1948 in a case where section 192 of the Companies Act 1985 (c. 6) applied immediately before the commencement of this section;
 - (b) 1st July 1961 in a case where Article 201 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) then applied.
- (3) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (1) above 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 75% in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose.
- (4) A meeting for that purpose must be summoned in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, in a manner approved by the court.

752 Power to re-issue redeemed debentures

- (1) Where a company has redeemed debentures previously issued, then unless—
- (a) provision to the contrary (express or implied) is contained in the company's articles or in any contract made by the company, or
 - (b) 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 may re-issue the debentures, either by re-issuing the same debentures or by issuing new debentures in their place.

This subsection is deemed always to have had effect.

- (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) The re-issue of a debenture or the issue of another debenture in its place under this section is treated as the issue of a new debenture for the purposes of stamp duty.

It is not so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

- (4) 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.

In that case the company is liable to pay the proper stamp duty and penalty.

753 Deposit of debentures to secure advances

Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not treated as redeemed by reason only of the company's account having ceased to be in debit while the debentures remained so deposited.

754 Priorities where debentures secured by floating charge

- (1) This section applies where debentures of a company registered in England and Wales or Northern Ireland are secured by a charge that, as created, was a floating charge.
- (2) If possession is taken, by or on behalf of the holders of the debentures, of any property comprised in or subject to the charge, and the company is not at that time in the course of being wound up, the company's preferential debts shall be paid out of assets coming to the hands of the persons taking possession in priority to any claims for principal or interest in respect of the debentures.
- (3) "Preferential debts" means the categories of debts listed in Schedule 6 to the Insolvency Act 1986 (c. 45) or Schedule 4 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

For the purposes of those Schedules "the relevant date" is the date of possession being taken as mentioned in subsection (2).

- (4) Payments under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.