



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART II

SHARE CAPITAL AND DEBENTURES.

Special Provisions as to Debentures.

86 Provisions as to registers of debenture holders.

- (1) A company registered in England shall not keep in Scotland and a company registered in Scotland shall not keep in England 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) 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, in the case of a company registered in England, or in Scotland, in the case of a company registered in Scotland, elsewhere than at the registered office of the company, any other office of the company at which the work of making it up is done, or, if the company arranges with some other person for the making up of the register or duplicate to be undertaken on behalf of the company by that other person, at the office of that other person at which the work is done, and where a company keeps in England or Scotland, as the case may be, both such a register and such a duplicate, it shall keep them at the same place.
- (3) Every company which keeps any such register or duplicate in England or Scotland shall send notice to the registrar of companies of the place where the register or duplicate is kept and of, any change in that place :

Provided that a company shall not be bound to send notice under this subsection where the register or duplicate has, at all times since it came into existence, or in the case of a company which came into existence after the commencement of this Act, at all times since then, been kept at the registered office of the company.

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87 Rights of inspection of register of debenture holders and to copies of register and trust deed.

- (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 in general meeting impose, so that not less than two hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the company without fee, and of any other person on payment of a fee of one shilling or such less sum as may be prescribed by the' company.
- (2) Any such registered holder of debentures or holder of shares as aforesaid or any other person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of sixpence for every hundred, words required to be copied.
- (3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every hundred words required to be copied.
- (4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and further shall be liable to a default fine of two pounds.
- (5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.
- (6) For the purposes of this section, a register shall be 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 thirty days in any year, as may be therein specified.

88 Liability of trustees for debenture holders.

- (1) Subject to the following provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof 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) The foregoing subsection shall not invalidate—
 - (a) any 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

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- (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Subsection (1) of this section shall not operate—
- (a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under the next 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 the last foregoing subsection, 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 thereof;
- 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.

89 Perpetual debentures.

A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be 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.

90 Power to re-issue redeemed debentures in certain cases.

- (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, then—
- (a) unless any 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 shall have, and shall be 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) Subject to the provisions of the next following section, on a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.
- (3) Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time On current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

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- (4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any 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 thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

91 Saving, in case of re-issued debentures, of rights of certain mortgagees.

Whereas by section one hundred and four of the Companies (Consolidation) Act, 1908, it was provided that, upon the re-issue of redeemed debentures, the person entitled to the debentures should have the same rights and priorities as if the debentures had not previously been issued:

And whereas section forty-five of the Companies Act, 1928, amended the said section one hundred and four so as to provide (amongst other things) that the said person should have the same priorities as if the debentures had never been redeemed, but saved, in the case Of debentures redeemed before, but re-issued after, the date of the commencement of that Act (that is to say, the first day of November, nineteen hundred and twenty-nine), the rights and priorities of persons under mortgages and charges created before that date:

Now, therefore, where any debentures which were redeemed before the said first day of November have been re-issued after that day and before the commencement of this Act, or are re-issued after the commencement of this Act, the re-issue of the debentures shall not prejudice and shall be deemed never to have prejudiced any right or priority which any person would have had under or by virtue of any such mortgage or charge as aforesaid if the said section one hundred and four, as originally enacted, had been enacted in this Act instead of the last foregoing section.

92 Specific performance of contracts to subscribe for debentures.

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

93 Validity of debentures to bearer in Scotland.

It is hereby declared that, notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are valid and binding according to their terms.

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94 Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

- (1) Where, in the case of a company registered in England, 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, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.
- (2) In the application of the said provisions, section three hundred and nineteen of this Act shall be construed 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 aforesaid.
- (3) The periods of time mentioned in the said provisions of Part V of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.
- (4) Where the date referred to in the last foregoing subsection occurred before the commencement of this Act, subsections (1) and (3) of this section shall have effect with the substitution, for references to the said provisions of Part V of this Act, of references to the provisions which, by virtue of subsection (9) of the said section three hundred and nineteen are deemed to remain in force in the case therein mentioned, and subsection (2) shall not apply.
- (5) Any 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.