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STATUTORY INSTRUMENTS

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**2009 No. 1804**

The Limited Liability Partnerships (Application  
of Companies Act 2006) Regulations 2009

PART 6

DEBENTURES

**General provisions**

**20.** Sections 738 to 742 apply to LLPs, modified so that they read as follows—

**“Meaning of “debenture”**

**738.** In this Act “debenture” includes debenture stock, bonds and any other securities of an LLP, whether or not constituting a charge on the assets of the LLP.

**Perpetual debentures**

**739.**—(1) A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are made—

- (a) irredeemable, or
- (b) redeemable only—
  - (i) on the happening of a contingency (however remote), or
  - (ii) on the expiration of a period (however long),

any rule of equity to the contrary notwithstanding.

(2) Subsection (1) applies to debentures whenever issued and to deeds whenever executed.

**Enforcement of contract to subscribe for debentures**

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

**Registration of allotment of debentures**

**741.**—(1) An LLP must register an allotment of debentures as soon as practicable and in any event within two months after the date of the allotment.

- (2) If an LLP fails to comply with this section, an offence is committed by—
- (a) the LLP, and
  - (b) every member of the LLP 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) For the duties of the LLP as to the issue of the debentures, or certificates of debenture stock, see Part 21 (certification and transfer of securities).

#### **Debentures to bearer (Scotland)**

742. 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.”.

#### **Register of debenture holders**

21. Sections 743 to 748 apply to LLPs, modified so that they read as follows—

##### **“Register of debenture holders**

743.—(1) Any register of debenture holders of an LLP that is kept by the LLP must be kept available for inspection—

- (a) at the LLP’s registered office, or
- (b) at a place specified in Part 2 of the Companies (Company Records) Regulations 2008 (S.I. 2008/3006).

(2) An LLP must give notice to the registrar of the place where any such register is kept available for inspection and of any change in that place.

(3) No such notice is required if the register has, at all times since it came into existence, been kept available for inspection at the LLP’s registered office.

(4) If an LLP makes default for 14 days in complying with subsection (2), an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(5) 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.

(6) References in this section to a register of debenture holders include a duplicate—

- (a) of a register of debenture holders that is kept outside the United Kingdom, or
- (b) of any part of such a register.

##### **Register of debenture holders: right to inspect and require copy**

744.—(1) Every register of debenture holders of an LLP must, except when duly closed, be open to the inspection—

- (a) of the registered holder of any such debentures, or any member of the LLP, without charge, and
- (b) of any other person on payment of the fee prescribed by regulation 2 of the Companies (Fees for Inspection and Copying of Company Records) (No. 2) Regulations 2007 (S.I. 2007/3535).

(2) Any person may require a copy of the register, or any part of it, on payment of the fee prescribed by regulation 3 of the Companies (Fees for Inspection and Copying of Company Records) (No. 2) Regulations 2007 (S.I. 2007/3535).

(3) A person seeking to exercise either of the rights conferred by this section must make a request to the LLP to that effect.

(4) The request must contain the following information—

- (a) in the case of an individual, his name and address;
- (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
- (c) the purpose for which the information is to be used; and
- (d) whether the information will be disclosed to any other person, and if so—
  - (i) where that person is an individual, his name and address,
  - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
  - (iii) the purpose for which the information is to be used by that person.

(5) For the purposes of this section a register is “duly closed” if it is closed in accordance with provision contained—

- (a) in the debentures,
- (b) in the case of debenture stock in the stock certificates, or
- (c) in the trust deed or other document securing the debentures or debenture stock.

The total period for which a register is closed in any year must not exceed 30 days.

(6) References in this section to a register of debenture holders include a duplicate—

- (a) of a register of debenture holders that is kept outside the United Kingdom, or
- (b) of any part of such a register.

#### **Register of debenture holders: response to request for inspection or copy**

**745.**—(1) Where an LLP receives a request under section 744 (register of debenture holders: right to inspect and require copy), it must within five working days either—

- (a) comply with the request, or
- (b) apply to the court.

(2) If it applies to the court it must notify the person making the request.

(3) If on an application under this section the court is satisfied that the inspection or copy is not sought for a proper purpose—

- (a) it shall direct the LLP not to comply with the request, and
- (b) it may further order that the LLP’s costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.

(4) If the court makes such a direction and it appears to the court that the LLP is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the LLP is not to comply with any such request.

The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.

(5) If on an application under this section the court does not direct the LLP not to comply with the request, the LLP must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.

#### **Register of debenture holders: refusal of inspection or default in providing copy**

**746.**—(1) If an inspection required under section 744 (register of debenture holders: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

(2) 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.

(3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

#### **Register of debenture holders: offences in connection with request for or disclosure of information**

**747.**—(1) It is an offence for a person knowingly or recklessly to make in a request under section 744 (register of debenture holders: right to inspect and require copy) a statement that is misleading, false or deceptive in a material particular.

(2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section—

- (a) to do anything that results in the information being disclosed to another person, or
- (b) to fail to do anything with the result that the information is disclosed to another person,

knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.

(3) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction—
  - (i) in England and Wales or Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
  - (ii) in Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### **Time limit for claims arising from entry in register**

**748.**—(1) Liability incurred by an LLP—

- (a) from the making or deletion of an entry in the register of debenture holders, or
- (b) from a failure to make or delete any such entry,

is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred.

(2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).”.

### **Supplementary provisions**

**22.** Sections 749 and 750 apply to LLPs, modified so that they read as follows—

#### **“Right of debenture holder to copy of deed**

**749.**—(1) Any holder of debentures of an LLP is entitled, on request and on payment of the fee prescribed by regulation 4 of the Companies (Fees for Inspection and Copying of Company Records) (No. 2) Regulations 2007 ([S.I. 2007/3535](#)), 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 member of the LLP 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.

#### **Liability of trustees of debentures**

**750.**—(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—

- (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.”.

**23.** Sections 752 to 754 apply to LLPs, modified so that they read as follows—

#### **“Power to re-issue redeemed debentures**

**752.**—(1) Where an LLP has redeemed debentures previously issued, then unless—

- (a) provision to the contrary (express or implied) is contained in any contract made by the LLP, or
- (b) the LLP has, by making a determination to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the LLP 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 LLP is liable to pay the proper stamp duty and penalty.

#### **Deposit of debentures to secure advances**

**753.** Where an LLP 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 LLP's account having ceased to be in debit while the debentures remained so deposited.

#### **Priorities where debentures secured by floating charge**

**754.—**(1) This section applies where debentures of an LLP 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 LLP is not at that time in the course of being wound up, the LLP'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 LLP available for payment of general creditors."