

New Companies Ordinance

Briefing Notes on Part 7

Debentures

INTRODUCTION

Part 7 (Debentures) of the new Companies Ordinance (“new CO”) contains provisions that deal with matters concerning debentures, for example, keeping of the register of debenture holders, rights to inspect and make copies of the register, trust deeds and other documents and convening meetings of debenture holders.

POLICY OBJECTIVES AND MAJOR CHANGES

2. Part 7 contains initiatives that aim at modernising the law (subparagraph (a) below) and ensuring better regulation (subparagraphs (b) to (d)), namely -

- (a) Improving clarity by separating provisions applicable to debentures from those applicable to shares (paragraph 4 below).
- (b) Aligning provisions for keeping of the register of debenture holders with similar provisions for register of members in Part 12 (paragraphs 5 to 7);
- (c) Introducing new requirements for registration of allotment of debentures to align with similar requirements for shares introduced in Part 4 (paragraphs 8 to 9); and
- (d) Allowing debenture holders to apply to the Court to order a meeting to be held to give directions to the trustee for the protection of debenture holders (paragraphs 10 to 11).

3. The details of the above major changes in Part 7 are set out in paragraphs 4 to 11 below.

Improving clarity by separating provisions applicable to debentures from those applicable to shares (Sections 311, 321 and 323 to 324)

4. Under the Companies Ordinance (Cap. 32) (“Cap. 32”), some of the provisions applicable to both shares and debentures are scattered in different parts. This arrangement is not user-friendly as those interested only in debentures would need to go through the various parts to identify provisions applicable to debentures. To improve clarity, all substantive requirements about debentures are now grouped under Part 7. For example, power to close the register of debenture holders (**section 311**), registration of transfer or refusal of registration (**section 321**), duties of companies with respect to issue of debentures or certificates for debenture stock on transfer (**section 323**) and the Court’s power to order such issue (**section 324**).

Aligning provisions for keeping of the register of debenture holders with similar provisions for register of members in Part 12 (Sections 308 to 315)

Position under Cap. 32

5. Cap. 32 sets out the requirements for keeping a register of debenture holders (section 74A) in a manner similar to those for a register of members in respect of shareholding in a company (section 95). However, there is a difference between the two, i.e. only the register of debenture holders is required to detail the occupation or give a description of the debenture holder. Also, under Cap. 32, there are provisions for keeping of a branch register for the register of members (sections 103 and 104) but there are no similar provisions for the register of debenture holders.

Position and key provisions in the new CO

6. To ensure consistency and to clarify the law in the new CO, the provisions relating to the register of debenture holders are aligned with and mirror those relating to the register of members, including removing the requirement to disclose the debenture holder’s occupation (**section 308**), and adding the provisions for keeping of branch registers in respect of debenture holders (**sections 312 to 315**).

7. **Section 308** provides for the keeping of a register of debenture holders. **Section 309** provides for the place where the register of debenture holders must be kept. **Section 310** provides for the right to inspect and request a copy of the register of debenture holders. **Sections 312 to 315** provide for the keeping of branch registers of debenture holders.

Introducing new requirements for registration of allotment of debentures to align with similar requirements for shares in Part 4 (Sections 316 and 317)

Position under Cap. 32

8. Cap. 32 requires a company to deliver a return of allotment of shares to the Registrar of Companies (“the Registrar”) for registration, but there are no similar requirements in respect of an allotment of debentures. Section 70(1) of Cap. 32 obliges a company to complete and deliver the debentures or certificates for debenture stock within two months after their allotment. However, Cap. 32 does not require an entry to be made in the register of debenture holders after an allotment of debentures.

Position and key provisions in the new CO

9. **Section 316** provides that within one month after the allotment of debentures (including debenture stock), a company must deliver to the Registrar a return of the allotment in the specified form for registration. **Section 317** provides that as soon as practicable, and in any event within two months after an allotment of debentures, a company must register the allotment in the register of debenture holders. These are new provisions to help protect investors in debentures and align the position of debenture holders with that of members. **Sections 316 and 317** largely mirror similar requirements for shares under sections 142 and 143 of Part 4.

Allowing debenture holders to apply to the Court to order a meeting to be held to give directions to the trustee for the protection of debenture holders (Section 331)

Position under Cap. 32

10. Section 75A of Cap. 32 provides that where the debentures or the trust deed or other document securing the debentures or stock provide for the holding of meetings of holders of debentures or stock, then subject to such provisions, such meetings shall be convened subject to the relevant provisions in Cap. 32¹. In practice, however, section 75A is unlikely to be invoked, because if the debenture documents do not provide for meetings, the provisions in Cap. 32 would be of no assistance. Where the debenture documents do so provide, these documents (if professionally prepared) are likely to have their own provisions which will negate the application of the provisions in Cap. 32.

Position and key provisions in the new CO

11. **Section 331** replaces section 75A of Cap. 32 to provide that the Court may order a meeting of debenture holders. The section provides for the right for debenture holders holding 10% of the value of the debentures in total to apply to the Court to order a meeting for giving directions to the trustee. This is subject to any provisions in the debentures, or the trust deeds or other documents securing the issue of the debentures that exclude such right or require a higher percentage of debenture-holdings. This section applies to debentures forming part of a series issued by the company and ranking *pari passu* (i.e. of the same rank) with other debentures of that series, and debenture stock.

TRANSITIONAL AND SAVING ARRANGEMENTS

12. The major changes described in these Notes apply to activities carried out after the commencement date of the new CO. For activities started under Cap. 32 and in progress when the new CO commences, Cap. 32 provisions will continue to apply (**sections 50 to 61 of Schedule 11** to the new CO).

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¹ Sections 113, 114B, 114C, 114D(2) and 114E of Cap. 32.