

Part 7

Debentures

Division 1

Preliminary

307. Interpretation

In this Part—

branch register (登記支冊) means a branch register kept under section 312;

debenture (債權證), in relation to a company—

- (a) includes bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company; and
- (b) except in sections 308, 311(2)(a), 312 and 331(1)(a) and Divisions 3 and 4, includes debenture stock;

register of debenture holders (債權證持有人登記冊) means a register kept under section 308.

Division 2

Register of Debenture Holders

308. Register of debenture holders

- (1) If a company issues a series of debentures, or any debenture stock, that are not transferable by delivery, the company must keep in the English or Chinese language a register of the holders of the debentures or debenture stock.

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- (2) A company must enter in the register of debenture holders—
 - (a) the name and address of each holder of debentures or debenture stock;
 - (b) the amount of debentures or debenture stock held by each holder;
 - (c) the date on which each person is entered in the register as a holder of debentures or debenture stock; and
 - (d) the date on which any person ceases to be a holder of debentures or debenture stock.
 - (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

309. Place where register must be kept

- (1) A company must keep its register of debenture holders at—
 - (a) the company's registered office; or
 - (b) a place prescribed by regulations made under section 657.
- (2) A company must notify the Registrar of the place at which the register of debenture holders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the register is first kept at that place.
- (3) A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of debenture holders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the change.

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- (4) Subsection (2) does not require a company to notify the Registrar of the place at which the register of debenture holders is kept—
- (a) if, in the case of a register that came into existence on or after the commencement date of this Division, it has at all times been kept at the company's registered office; or
 - (b) if—
 - (i) immediately before that commencement date, the company kept a register for the purposes of section 74A of the predecessor Ordinance; and
 - (ii) on and after that commencement date, that register is kept as a register of debenture holders for the purposes of section 308(1) at the place at which it was kept immediately before that commencement date.
- (5) If a company contravenes subsection (1), (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

310. Right to inspect and request copy

- (1) A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect the register of debenture holders of the company in accordance with regulations made under section 657.
- (2) A person who is registered in the register as a debenture holder of the company is entitled, on request made in the prescribed manner and without charge, to inspect the register in accordance with regulations made under section 657.

- (3) Any other person is entitled, on request made in the prescribed manner and on payment of a prescribed fee, to inspect the register in accordance with regulations made under section 657.
- (4) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of debenture holders of a company, or any part of it, in accordance with regulations made under section 657.
- (5) A debenture holder of a company or the trustee for all debenture holders of a company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of any trust deed or any other document securing the issue of the debentures in accordance with regulations made under section 657.
- (6) In this section—
prescribed (訂明) means prescribed by regulations made under section 657.

311. Power to close register of debenture holders

- (1) A company may, on giving notice in accordance with subsection (2), close its register of debenture holders, or any part of it, for any period or periods not exceeding in the whole 30 days in each year.
- (2) A notice for the purposes of subsection (1)—
 - (a) in the case of a company having any of the debentures or debenture stock mentioned in section 308(1) listed on a recognized stock market, must be given—
 - (i) in accordance with the listing rules applicable to the stock market; or
 - (ii) by advertisement in a newspaper circulating generally in Hong Kong; and

- (b) in the case of any other company, must be given by advertisement in a newspaper circulating generally in Hong Kong.
- (3) The period of 30 days mentioned in subsection (1) may be extended in respect of any year by a resolution passed in that year by a majority in value of the debenture holders present in person or, if proxies are permitted, by proxy at a meeting summoned for the purpose or otherwise in accordance with the trust deed or any other document securing the issue of the debentures.
- (4) The period of 30 days mentioned in subsection (1) must not be extended for a further period or periods exceeding 30 days in the whole in any year.
- (5) A company must, on demand, provide any person seeking to inspect a register or part of a register that is closed under this section with a certificate signed by the company secretary of the company stating the period for which, and by whose authority, it is closed.
- (6) If a company contravenes subsection (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.

312. Branch register of debenture holders

- (1) If a company issues in a place outside Hong Kong a series of debentures, or any debenture stock, that are not transferable by delivery, the company may, if it is authorized to do so by its articles, cause to be kept there a branch register of the holders of the debentures or debenture stock who are resident there.
- (2) A company that begins to keep a branch register must deliver to the Registrar for registration a notice in the specified form within 15 days after doing so, stating the address where the branch register is kept.

- (3) A company that keeps a branch register must deliver to the Registrar for registration a notice in the specified form of any change in the address where the branch register is kept, within 15 days after the change.
- (4) If a company contravenes subsection (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

313. Keeping of branch register

- (1) A branch register must be kept in the same manner in which the company's register of debenture holders (*the principal register*) is by this Ordinance required to be kept.
- (2) A company that keeps a branch register may close it in the same manner in which the principal register may be closed under section 311 except that the advertisement mentioned in that section must be inserted in a newspaper circulating generally in the place in which the branch register is kept.
- (3) A company that keeps a branch register—
 - (a) must cause a duplicate of it to be kept at the place at which the company's principal register is kept; and
 - (b) must, within 15 days after an entry is made in the branch register—
 - (i) transmit a copy of the entry to its registered office; and
 - (ii) update the duplicate of the branch register.
- (4) A duplicate of a branch register is to be regarded for all the purposes of this Ordinance as part of the principal register.

- (5) Subject to the provisions of this Ordinance, a company may by its articles make any provision that it thinks fit respecting the keeping of branch registers.
- (6) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

314. Transactions in debentures registered in branch register

- (1) The debentures registered in a branch register of a company must be distinguished from those registered in the company's register of debenture holders.
- (2) No transaction with respect to any debentures registered in a branch register may, during the continuance of that registration, be registered in any other register.

315. Discontinuance of branch register

- (1) A company may discontinue a branch register.
- (2) If a company discontinues a branch register, all the entries in that register must be transferred to—
 - (a) some other branch register kept in the same place outside Hong Kong by the company; or
 - (b) the company's register of debenture holders.
- (3) If a company discontinues a branch register, it must, within 15 days after the discontinuance, deliver to the Registrar for registration a notice in the specified form informing the Registrar of—
 - (a) the discontinuance; and
 - (b) the register to which the entries have been transferred.

- (4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

Division 3

Allotment of Debentures or Debenture Stock

316. Return of allotment

- (1) Within one month after an allotment of debentures or debenture stock, a company must deliver to the Registrar for registration a return of the allotment that complies with subsection (2).
- (2) A return—
- (a) must be in the specified form; and
 - (b) must state—
 - (i) the amount of debentures or debenture stock allotted;
 - (ii) the name and address of each allottee;
 - (iii) the date of allotment of debentures or debenture stock; and
 - (iv) the date of redemption of debentures or debenture stock.
- (3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

- (4) If a company fails to deliver a return that complies with subsection (2) within one month after an allotment of debentures or debenture stock, the Court may, on application by the company or a responsible person of the company, extend the period for delivery of the return by a period determined by the Court.
- (5) The Court may extend a period under subsection (4) only if it is satisfied—
 - (a) that failure to deliver the return was accidental or due to inadvertence; or
 - (b) that it is just and equitable to extend the period.
- (6) If the Court extends the period for delivery of a return, any liability already incurred by the company or a responsible person of the company for an offence under subsection (3) is extinguished and subsection (1) has effect as if the reference to one month were a reference to the extended period.

317. Registration of allotment

- (1) A company must register an allotment of debentures or debenture stock as soon as practicable and in any event within 2 months after the date of the allotment, by entering in its register of debenture holders the information mentioned in section 308(2).
- (2) If a company fails to register an allotment of debentures or debenture stock within 2 months after the date of the allotment, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

318. Issue of debenture or certificate for debenture stock on allotment

- (1) Within 2 months after an allotment of debentures or debenture stock, a company must—
 - (a) in the case of an allotment of debentures, complete the debentures and have them ready for delivery; or
 - (b) in the case of an allotment of debenture stock, complete the certificates for the debenture stock and have them ready for delivery.
- (2) Subsection (1) does not apply if the conditions of allotment of the debentures or debenture stock provide otherwise.
- (3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

319. Court order for delivery of debenture or certificate for debenture stock

- (1) If a company contravenes section 318 in relation to an allotment of debentures or debenture stock, a person entitled to the debentures or certificates for the debenture stock may serve a notice on the company requiring it to deliver the debentures or certificates to the person within 10 days.
- (2) If a company on which a notice has been served under subsection (1) does not deliver the debentures or certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).
- (3) On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the debentures or certificates to the person within the period specified in the order.

- (4) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

Division 4

Transfer of Debentures or Debenture Stock

320. Requirement for instrument of transfer

- (1) A company must not register a transfer of debentures or debenture stock of the company unless a proper instrument of transfer has been delivered to the company.
- (2) Subsection (1) does not affect any power of a company to register as a debenture holder a person to whom the right to debentures or debenture stock has been transmitted by operation of law.

321. Registration of transfer or refusal of registration

- (1) The transferee or transferor of debentures or debenture stock of a company may lodge the transfer with the company.
- (2) Within 2 months after the transfer is lodged, the company must either—
- (a) register the transfer; or
 - (b) send the transferee and the transferor notice of refusal to register the transfer.
- (3) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

322. Certification of transfer

- (1) The certification by a company of an instrument of transfer of any debentures or debenture stock of the company—
 - (a) is a representation by the company to any person acting on the faith of the certification that documents have been produced to the company that evidence title to the debentures or debenture stock in the transferor named in the instrument; and
 - (b) is not a representation that the transferor has any title to the debentures or debenture stock.
- (2) If a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.
- (3) For the purposes of this section, an instrument of transfer is certified by a company if it bears—
 - (a) the words “certificate lodged”, or words to the same effect, in English or Chinese; and
 - (b) under or adjacent to those words, the signature or initials of a person having the actual or apparent authority to certify transfers on behalf of the company.
- (4) Unless the contrary is proved, a signature or initials appearing on an instrument of transfer as mentioned in subsection (3)(b) must be regarded—
 - (a) as the signature or initials of the person whose signature or initials they purport to be; and
 - (b) as having been placed on the instrument by that person or by another person who has the actual or apparent authority to use the signature or initials for the purpose of certifying transfers on behalf of the company.

323. Issue of debenture or certificate for debenture stock on transfer

- (1) Within the period specified in subsection (2), a company must—
 - (a) in the case of a transfer of debentures, complete the debentures and have them ready for delivery; or
 - (b) in the case of a transfer of debenture stock, complete the certificates for the debenture stock and have them ready for delivery.
- (2) The period is—
 - (a) for a private company, 2 months after the day on which the transfer is lodged with the company;
 - (b) for any other company, 10 business days after the day on which the transfer is lodged with the company.
- (3) Subsection (1) does not apply to a transfer if—
 - (a) the conditions of issue of the debentures or debenture stock provide otherwise;
 - (b) stamp duty has not been paid in respect of the transfer;
 - (c) the transfer is invalid; or
 - (d) the company, being entitled to do so, refuses to register the transfer.
- (4) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5) In this section—

business day (營業日) means a day on which a recognized stock market is open for the business of dealing in securities.

324. Court order for delivery of debenture or certificate for debenture stock

- (1) If a company contravenes section 323 in relation to a transfer of debentures or debenture stock, a person entitled to the debentures or certificates for the debenture stock may serve a notice on the company requiring it to deliver the debentures or certificates to the person within 10 days.
- (2) If a company on which a notice has been served under subsection (1) does not deliver the debentures or certificates within 10 days after service of the notice, the person may apply to the Court for an order under subsection (3).
- (3) On an application under subsection (2), the Court may make an order directing the company and any officer of the company to deliver the debentures or certificates to the person within the period specified in the order.
- (4) The order may provide that all costs of and incidental to the application are to be borne by the company or by an officer of the company responsible for the contravention.

Division 5**Miscellaneous Provisions****325. Evidence of grant of probate etc.**

For the purposes of a transfer of debentures or transmission of the right to debentures, a company must accept as sufficient evidence of the grant of probate of the will or letters of administration of a deceased person the production to the company of a document that is by law sufficient evidence of that grant.

326. Form of register of holders of debentures kept under instrument made by company

- (1) This section applies to a register of holders of debentures that is required to be kept under an instrument made by a company.
- (2) If a provision of the instrument requires the register to be kept in a legible form, the provision is to be construed as requiring the register to be kept either—
 - (a) in a legible form; or
 - (b) in a non-legible form capable of being reproduced in a legible form.

327. Perpetual debentures

- (1) Despite any rule of equity to the contrary, a condition contained in any debentures, or in a deed securing the issue of any debentures, is not invalid only because the debentures are, by the condition, made—
 - (a) irredeemable;
 - (b) redeemable only on the happening of a contingency (however remote); or
 - (c) redeemable only on the expiration of a period of time (however long).
- (2) Subsection (1) applies to debentures whenever issued and to deeds whenever executed.

328. Power to reissue redeemed debentures

- (1) This section applies if a company has, whether before, on or after the commencement date of this section, redeemed any debentures previously issued.

- (2) A company has, and is to be regarded as always having had, the power to reissue redeemed debentures, either by reissuing the same debentures or by issuing new debentures in their place, unless—
 - (a) a provision to the contrary (express or implied) is contained in the company's articles or any contract made by the company; or
 - (b) the company has, by passing a resolution to that effect or by any other act, manifested its intention that the debentures are to be cancelled.
- (3) On a reissue of any redeemed debentures, a person entitled to the debentures has, and is to be regarded as always having had, the same priorities as if the debentures had never been redeemed.
- (4) A reissue of redeemed debentures, whether before, on or after the commencement date of this section—
 - (a) is to be regarded as an issue of new debentures for the purposes of stamp duty; and
 - (b) is not to be regarded as an issue of new debentures for the purposes of any provision limiting the amount or number of debentures to be issued.
- (5) A person lending money on the security of any debentures reissued under this section that appear to be stamped may give the debentures in evidence in any proceedings for enforcing the person's security.
- (6) If a person gives the debentures in evidence in any proceedings for enforcing the person's security under subsection (5), the stamp duty and penalty payable under the Stamp Duty Ordinance (Cap. 117) in respect of the reissue of the debentures are to be paid by the company.
- (7) Subsections (5) and (6) do not apply if the person had notice or, but for the person's negligence, might have discovered that the debentures were not stamped.

- (8) If any debentures redeemed before 1 July 1933 are reissued on or after that date, the reissue does not prejudice, and is to be regarded as never having prejudiced, any right or priority that a person would have had under or by virtue of any mortgage or charge created before that date.

329. Deposit of debentures to secure advances

If a company has, whether before, on or after the commencement date of this section, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not to be regarded as having been redeemed only because the account of the company has ceased to be in debit while the debentures remained so deposited.

330. 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.

331. Court may order meeting of debenture holders

- (1) This section applies to any person who holds—
- (a) any debentures that form part of a series issued by a company and rank equally with the other debentures of that series; or
 - (b) any debenture stock of a company.
- (2) If a person to whom this section applies, either alone or jointly with any other such person, holds at least the specified percentage of the value of the company's debentures, the person may apply to the Court for a meeting of the company's debenture holders to be held to give directions to the trustee for the debenture holders.

(3) Subsection (2) may be excluded by the debentures, or the trust deeds or other documents securing the issue of the debentures.

(4) In this section—

specified percentage (指明百分比) means—

(a) 10%; or

(b) the higher percentage that may be provided for in the debentures, or the trust deeds or other documents securing the issue of the debentures.

332. Liability of trustees for debenture holders

(1) A provision contained in—

(a) a trust deed securing an issue of debentures; or

(b) a contract with the holders of debentures secured by a trust deed,

is void to the extent that it would exempt a trustee of the trust deed from, or indemnify the trustee against, liability for breach of trust for the trustee's failure to show the degree of care and diligence required of the trustee as a trustee, having regard to the provisions of the trust deed conferring on the trustee any powers, authorities or discretions.

(2) Subsection (1) does not—

(a) invalidate 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) invalidate any provision enabling such a release to be given—

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- (i) on being agreed to by a majority of at least 75% in value of the debenture holders present and voting in person or, if 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;
 - (c) invalidate any provision in force on 31 August 1984 so long as any person who is then entitled to the benefit of the provision, or who is afterwards given the benefit of the provision under subsection (3), remains a trustee of the trust deed; or
 - (d) deprive any person of any exemption or right to be indemnified in respect of anything done, or omitted to be done, by the person while any provision mentioned in paragraph (c) was in force.
- (3) While a trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (2)(c) or (d), the benefit may be given, in accordance with subsection (4), to—
- (a) all present and future trustees of the trust deed; or
 - (b) any named trustees or proposed trustees of the trust deed.
- (4) The benefit is to be given by a resolution passed by a majority of at least 75% in value of the debenture holders present in person or, if proxies are permitted, by proxy at a meeting summoned for the purpose—
- (a) in accordance with the provisions of the trust deed; or
 - (b) if the trust deed makes no provision for summoning meetings, in a manner approved by the Court.
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