

PART 7

DEBENTURES

Introduction

1. The specific provisions on debentures are currently contained in sections 74A to 79 of the CO. They deal with a miscellany of matters, for example, the register of debenture holders, rights of inspection of the register and to copies of the register, trust deed and other documents, and meetings of debenture holders. A number of other provisions in the CO also apply to both debentures and shares (see paragraph 10 below).
2. To improve clarity, all substantive provisions on debentures are grouped into Part 7 of the CB. Adjustments are made mainly to align with the corresponding provisions for shares. We also introduce a new requirement for the allotment of debentures to be registered, in parallel with a similar new requirement for shares. Current sections 75A and 79 of the CO will not be re-enacted¹.

- The significant changes to be introduced under this Part are highlighted below:
 - (a) **Aligning provisions for keeping of the register of debenture holders and branch register with the corresponding provisions for shares;**
 - (b) **Introducing new requirements applicable to the allotment of debentures to align with similar requirements for shares; and**
 - (c) **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.**

¹ Section 79 will be reviewed in Phase II of the Rewrite.

Significant Changes

(a) **Aligning provisions for keeping of the register of debenture holders and branch register with the corresponding provisions for shares**

Background

3. Section 74A of the CO sets out the requirement for keeping the register of debenture holders, similar to section 95 governing the register of members in relation to their holding of shares in a company. Although the provision is largely the same as that for shares, there is a difference in that the register of debenture holders is required to state the occupation of the debenture holders (or otherwise provide a description), whilst it is not so required for the register of members. Sections 103 and 104 of the CO provide for the keeping of a branch register of members. However, there is no provision for duplicate and branch register for debenture holders. Since it is as likely for debt securities to be issued outside the issuer's home jurisdiction these days as it is for shares, it would be useful to also provide for branch and duplicate registers of debenture holders.
4. In addition, there are provisions in the CO which govern the place where the register of members of a company is to be kept (section 95), and the right to inspect and request a copy of the register of members (section 98). These provisions are essentially restated in Part 12 of the CB². To ensure consistency, the provisions on registers of debenture holders and registers of members will be aligned.

Proposal

5. The clauses governing the register of debenture holders will generally mirror the corresponding clauses on the register of members. Such clauses include:
 - **Clause 7.2** on the keeping of the register of debenture holders;
 - **Clause 7.3** on the place where the register of debenture holders is kept;

² See FSTB, "Part 12: Company Administration and Procedure", *Companies Bill Consultation Draft (Parts 1, 2, 10-12 & 14-18)* (December 2009).

- **Clause 7.4** on the right to inspect and request a copy of the register of debenture holders³; and
- **Clauses 7.9 to 7.12** on the keeping of branch and duplicate registers of debenture holders.

(b) Introducing new requirements applicable to the allotment of debentures to align with similar requirements for shares

Background

6. Section 45 of the CO requires a company to deliver a return of the allotment of shares to the Registrar for registration. **Clause 4.11** of the CB will further require an entry to be made in the register of members within 2 months after the date of the allotment of shares⁴. Currently, there are no such requirements for the allotment of debentures. To help protect investors in debentures, requirements similar to those for the allotment of shares will be adopted.

Proposal

7. **Clause 7.13** provides that within one month after an allotment of debentures, a company must deliver to the Registrar for registration a return of the allotment. **Clause 7.14** provides that as soon as practicable and in any event within 2 months after an allotment of debentures, a company must register the allotment in the register of debenture holders.

(c) 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

Background

8. Section 75A of the CO provides that certain provisions concerning meetings of debenture holders shall mirror those applicable to meetings of

³ The right to a copy of the trust deed will be restricted to debenture holders and trustees only, which is the same as the UK, Australia and Singapore.

⁴ See Explanatory Notes on Part 4 above.

shareholders⁵, but only if the debentures, the trust deed or other document securing the debentures or stock provide for such meetings and to the extent that they are not inconsistent with the debenture documents concerned. In practice, it is difficult to see when the provisions are likely to be invoked. If the debenture documents do not provide for meetings, the provision will 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 statutory provisions. It is considered that conferring a power on the court to order a meeting to give directions to the trustee for the protection of debenture holders appears to be more helpful to debenture holders⁶.

Proposal

9. **Clause 7.28** provides for the right for debenture holders of a company who together hold 10% of the value of the debentures of the company to apply to the court to order a meeting and give directions to the trustee, subject to any provision in the trust deeds to exclude such right or require a higher percentage of debenture holders who may make the application to the court. The debentures to which this clause applies are limited to debentures forming part of a series issued by the company and ranking *pari passu* with the other debentures of that series and debenture stock.

Other Changes

Improving clarity by separating provisions applicable to debentures from those to shares

10. Currently, some of provisions applicable to both shares and debentures are scattered in different parts of the CO. Examples are:
 - production of instrument of transfer for transfer of shares and debentures to be registered (section 66);
 - notice of refusal to register transfer (section 69);

⁵ The section only applies to a series of debentures ranking *pari passu* with the other debentures of that series or debenture stock. The provisions concern a requisition to convene an extraordinary general meeting (section 113 of the CO); the power of the court to order a meeting (section 114B); the appointment of proxies (section 114C); the right of a proxy to demand or join in the demand for a poll (section 114D(2)); and voting on a poll (section 114E).

⁶ There are similar provisions in the ACA. See Part 2L.5 (section 283EC in particular) of the ACA.

- certification of transfers (section 69A);
 - duties of company with respect to the issue of certificates on allotment and transfer and the court's power to order such issue (section 70); and
 - a company's power to close register of members and register of debenture holders (section 99).
11. Such a layout is not user-friendly as a reader interested only in debentures has to comb through various provisions in different parts of the Ordinance to identify those provisions applicable to debentures. To improve clarity, all substantive requirements about debentures are now grouped under Part 7.