

## PART 7

### DEBENTURES

#### Division 1 – Preliminary

##### 7.1 Interpretation

(1) In this Part –

“branch register” (登記支冊) means a branch register kept under section 7.9;

“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 7.2, 7.7(2)(a), 7.9 and 7.28(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 7.2.

(2) For the purposes of this Part, a register of holders of debentures kept under section 74A of the predecessor Ordinance is regarded as a register of debenture holders kept under section 7.2.

#### Division 2 – Register of Debenture Holders

##### 7.2 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.

(2) A register of debenture holders must state –

- (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), 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.

### **7.3 Place where register must be kept available for inspection**

(1) A company must keep its register of debenture holders available for inspection at –

- (a) the company's registered office; or
- (b) a prescribed place.

(2) A company must notify the Registrar of the place, or any change in the place, at which the register of debenture holders is kept. The notice must be given to the Registrar in the specified form within 14 days after the register is first kept at that place or within 14 days after the change (as the case may be).

(3) If the register of debenture holders of a company formed and registered under this Ordinance has been kept at the registered office of the company at all times since the register came into existence, then subsection (2) does not apply in relation to the register.

(4) 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.

#### **7.4 Right to inspect and request copy**

(1) Except when the register of debenture holders of a company is closed under section 7.7, the register must be open for inspection –

- (a) by any person who is registered in the register as a debenture holder of the company, without charge;
- (b) by any member of the company, without charge; and
- (c) by any other person, on payment of a prescribed fee.

(2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of –

- (a) the register of debenture holders of a company; or
- (b) any part of the register.

(3) 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 debentures.

(4) If a person makes a request under subsection (2) or (3), the company must provide the copy to the person within the prescribed period after the request and prescribed fee are received by the company.

(5) When a person inspects the register, or the company provides a person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.

(6) If a company contravenes subsection (4) or (5), 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.

(7) If a company contravenes subsection (4), the Court of First Instance may by order direct that the copy be provided to the person requesting it.

(8) The Court of First Instance must not make an order under subsection (7) if it is satisfied that the rights given by subsection (2) or (3) (as the case may be) are being abused.

### **7.5 Application and saving**

- (1) Despite the repeal of section 75 of the predecessor Ordinance –
- (a) that section continues to apply to an inspection of a register of holders of debentures on or after that repeal if the request for the inspection is received by the company before the commencement of section 7.4;
  - (b) that section continues to apply to a request for a copy of a register of holders of debentures or any part of it if the request is received by the company before that commencement; and
  - (c) that section continues to apply to a request for a copy of any trust deed or any other document securing any issue of debentures if the request is received by the company before that commencement.

(2) If, by virtue of subsection (1), a person inspects the register of holders of debentures, or is provided with a copy of the register or any part of it, in accordance with section 75 of the predecessor Ordinance, the company must also inform the person of the most recent date (if any) on which alterations were made to the register.

### **7.6 Consequences of contravening requirements as to register owing to other person's default**

If a company's register of debenture holders is kept at the office of a person other than the company, and by reason of any default of that other person, the company contravenes section 7.4(4), then the power of the Court of First Instance under section 7.4(7) extends to the making of an order against that other person and that other person's officers and other employees.

## **7.7 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 time or times 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 7.2(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 debentures.

(4) The period of 30 days mentioned in subsection (1) must not be extended beyond 60 days 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 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.

## **7.8 Application and saving**

Despite the repeal of section 99 of the predecessor Ordinance, that section continues to apply in relation to a closure of a register of debenture holders on or after that repeal if the notice for the purposes of section 99(1) of the predecessor Ordinance is given before the commencement of section 7.7.

## **7.9 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 give to the Registrar a notice in the specified form within 14 days after doing so, stating the address where the branch register is kept.

(3) A company that keeps a branch register must give to the Registrar a notice in the specified form of any change in the address where the branch register is kept, within 14 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.

## **7.10 Keeping of branch register**

(1) A branch register must be kept in the same manner in which the company's register of debenture holders (in this section called 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 7.7 except that the advertisement referred to 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 must –
- (a) transmit to its registered office a copy of every entry made in the branch register as soon as possible after it is made; and
  - (b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register entered up from time to time.

(4) A duplicate of a branch register is 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.

#### **7.11 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.

#### **7.12 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 14 days after the discontinuance give to the Registrar 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**

#### **7.13 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 of First Instance 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 of First Instance may extend a period under subsection (4) only if the Court 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 of First Instance 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.

#### **7.14 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 referred to in section 7.2(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.

### **7.15 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 debentures or debenture stock provide otherwise.

(3) If a company contravenes this section, 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.

### **7.16 Court order for delivery of debenture or certificate for debenture stock**

(1) If a company contravenes section 7.15 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 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 of First Instance for an order under subsection (3).

(3) On an application under subsection (2), the Court of First Instance 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**

##### **7.17 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.

##### **7.18 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.

##### **7.19 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 referred to 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.

#### **7.20 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 this section, 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.

### **7.21 Court order for delivery of debenture or certificate for debenture stock**

(1) If a company contravenes section 7.20 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 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 of First Instance for an order under subsection (3).

(3) On an application under subsection (2), the Court of First Instance 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**

### **7.22 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.

### **7.23 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.

## **7.24 Perpetual debentures**

(1) Despite any rule of equity to the contrary, a condition contained in any debentures, or in a deed securing 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.

## **7.25 Power to reissue redeemed debentures**

(1) This section applies if a company has, whether before, on or after the commencement 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 of this section –

- (a) is regarded as an issue of new debentures for the purposes of stamp duty; and
- (b) is not 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) Subsection (5) does not apply if the person had notice or, but for the person's negligence, might have discovered, that the debentures were not stamped.

(7) The stamp duty and penalty payable under the Stamp Duty Ordinance (Cap. 117) in respect of any debentures reissued under this section are to be paid by the company.

(8) Where 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 any person would have had under or by virtue of any mortgage or charge created before that date.

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

If a company has, whether before, on or after the commencement 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 of the account of the company having ceased to be in debit while the debentures remained so deposited.

#### **7.27 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.

## **7.28 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 that are of equal ranking 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 not less than the specified percentage of the value of the company's debentures, the person may apply to the Court of First Instance 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 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 debentures.

(5) Despite the repeal of section 75A of the predecessor Ordinance, that section continues to apply in relation to any requisition made before the commencement of this section for a meeting of debenture holders and to any relevant meeting of debenture holders.

## **7.29 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 –
  - (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, 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 not less than 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 of First Instance.

### **7.30 Immunity of trustees for debenture holders**

A trustee for a debenture holder is not liable for anything done, or omitted to be done, in accordance with any direction given to the trustee at a meeting held under section 7.28.