

## **Important provisions of the Companies Act, 2013 Regarding Debentures**

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When we look at the various provisions of debentures in the Companies Act, 2013(CA 2013 or the Act), there is no much difference in the basic features of the same as compared to the Companies Act, 1956 (CA 1956). Hence in this article instead of giving details of the provisions, an attempt has been made to highlight the changes or departure from the earlier provisions for the general understanding of readers. Except where it is specifically stated, the provisions in relation to the Act are given. Further, some of rules are published by the Government but have not yet become effective for want of their publication in the Official Gazette. However, the same are considered in this article.

A Company may issue debentures with an option to convert such debentures into shares wither wholly or in part at the time of redemption. Where such option is there, such issue shall be approved by a special resolution passed at a general meeting of the shareholders of the Company. A company, however, cannot issue any debentures carrying voting rights.

### *Secured debentures:*

The company shall not issue secured debentures, unless it complies with the following conditions, namely:-

(a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue.

Provided that a company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years;

(b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

(c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders ; and

(d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on-

(i) any specific movable property of the company (not being in the nature of pledge); or

(ii) any specific immovable property wherever situate, or any interest therein.

### *Debenture trustee:*

There are elaborate provisions in the Rules as regards appointment of debenture trustee, their disqualification, casual vacancy, duties etc. Basically a debenture trustee should not have any pecuniary interest or relationship with the company. Apart from

safeguarding interests of the debentureholders, one of his duties is to appoint a nominee director on the Board of Directors of the Company in case of two consecutive default in payment of interest, default in creation of security or default in redemption of debentures.

A trust deed in Form No.**SH.12** or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within sixty days of allotment of debentures.

As per sub rule 6 of rule 18, the provisions of sub-rules (2) to (5) of rule 18 i.e. trustees and trust deed etc. shall not be applicable to the public offer of debentures.

*Debenture redemption reserve:*

The company has to create a Debenture Redemption Reserve for the purpose of redemption of debentures, equivalent to at least fifty percent of the amount raised through the debenture issue before debenture redemption commences. It shall be created out of the profits of the company available for payment of dividend. This amount can be used only for the purpose of redemption. In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue.

Every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-

(i) in deposits with any scheduled bank, free from any charge or lien;

(ii) in unencumbered securities of the Central Government or of any State Government;

(iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;

(iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;

(v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on the 31st day of March of that year.

A copy of debenture trust deed is open for inspection as if it were a register of members. A copy of the same needs to be sent to any member or debentureholder within seven days of his request on payment of fee.