

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 19: Debentures

1036. This part restates the provisions of the 1985 Act relating to debentures. Sections 738-740, 742 and 749-754 make no change to the law.

Section 741: Registration of allotment of debentures

1037. This is a new section which obliges a company to register an allotment of debentures as soon as practicable, but in any event within two months after their allotment. It completes the picture as regards the existing requirement in section 185(1) of the 1985 Act (which is restated in section 769(1)) which obliges a company to complete and deliver certificates for debentures within two months after their allotment.

Section 743: Register of debenture holders

1038. This section replaces section 190 of the 1985 Act. There is no requirement for a company to keep a register of debenture holders but if such a register is kept, then it (or any duplicate) must be kept available for inspection at either the company's registered office or a place permitted under regulations made under section 1136. (This is the same as for the obligatory registers of members, see section 114.)

Section 744: Register of debenture holders: right to inspect and require copy

1039. This section replaces part of section 191 of the 1985 Act. It modifies the existing right of public access to any register of debenture holders kept by a company. The changes mirror similar requirements in Part 8 relating to the register of members. *Subsections (3) and (4)* require those seeking to inspect or to be provided with a copy of the register to provide their names and addresses, the purpose for which the information will be used, and, if the access is sought on behalf of others, similar information for them.

Section 745: Register of debenture holders: response to request for inspection or copy

1040. This is a new provision. It provides a procedure by which the company can refer the matter to the court if it considers the request is not for a proper purpose. It specifies a 5-day period within which the company must either comply with the request or apply to the court for relief from the obligation. If the company opts for the latter, then *subsections (3), (4) and (5)* apply. Under *subsection (3)*, if the court is satisfied that the access to the register of debenture holders is not sought for a proper purpose, it will require the company not to comply with the obligation to meet the request and may require that the person who made the request pay the company's costs. Under *subsection (4)*, the court may also require the company not to comply with other requests made for similar purposes. If the court does not make an order under *subsection (3)*, or the proceedings are discontinued, then, under *subsection (5)*, the company must immediately comply with the request.

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

Section 746: Register of debenture holders: refusal of inspection or default in providing copy

1041. This section retains the existing sanctions under section 191 of the 1985 Act for failure to comply with a request. They do not apply if the court has directed that the company need not comply with the request.

Section 747: Register of debenture holders: offences in connection with request for or disclosure of information

1042. This is a new provision. It creates two offences. First, in relation to the new requirement in section 744 to provide information in a request for access, it is an offence knowingly or recklessly to make a statement that is misleading, false or deceptive in a material particular. Second, it is an offence for a person having obtained information pursuant to an exercise of the rights in section 744 to do anything or fail to do anything which results in that information being disclosed to another person knowing or having reason to suspect that the other person may use the information for a purpose that is not a proper purpose.

Section 748: Time limit for claims arising from entry in register

1043. This section replaces section 191(7) of the 1985 Act. It amends the existing time limit for claims arising from errors in the register from twenty years to ten years. This mirrors equivalent provisions applicable to the register of members (see section 128).