



Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

PART III

MANAGEMENT AND ADMINISTRATION.

Debentures and Floating Charges.

103 Perpetual debentures.

A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

104 Power to re-issue redeemed debentures in certain cases.

- (1) Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.
- (2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

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- (3) Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.
- (4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture reissued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

- (5) Nothing in this section shall prejudice—
- (a) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the seventh day of March nineteen hundred and seven as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or
 - (b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

105 Specific performance of contract 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.

106 Validity of debentures to bearer in Scotland.

Notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are declared to be valid and binding according to their terms.

107 Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

- (1) Where, in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver for other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

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- (2) The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.
- (3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.