

Debenture rules- under Sec.71 of the Companies Act,2013
& Companies (Share capital and debentures) Rules , 2014

Introduction:

As per Sec.2(30) of the CA,2013,"*Debenture*" includes debenture stock, bonds or any other instrument of the company evidencing a debt, whether constituting a charge on the assets of the company or not.

A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption, which shall be approved by a special resolution passed at a general meeting.

No company shall issue any debentures carrying any voting rights.

Conditions for issue of secured debentures:

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

1.Term of Debentures:

An issue of secured debentures may be made, provided the date of its redemption shall not exceed 10 years from the date of issue.

If a company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding 10 years but not exceeding 30 years

2.Secured by charge:

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.

3.Appoint Debenture Trustee:

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 60 days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders.

4.Charge/Mortgage in favour of Debenture Trustee:

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.

Conditions for appointment of Debenture Trustees:

No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding 500 for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees

The company shall appoint debenture trustees after complying with the following conditions, namely:-

- (a) the *names of the debenture trustees shall be stated in letter of offer* inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;
- (b) before the appointment of debenture trustee or trustees, *a written consent shall be obtained from such debenture trustee* or trustees proposed to be appointed and

a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;

(d) the Board *may fill any casual vacancy in the office of the trustee* but while any such vacancy continues, the remaining trustee or trustees, if any, may act

If such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.

(e) any *debenture trustee may be removed from office before the expiry* of his term only if it is *approved by the holders of not less 3/4th in value* of the debentures outstanding, at their meeting.

Duties of Debenture Trustee:

It shall be the duty of every debenture trustee to-

(a) satisfy himself that the *letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures* or with the trust deed;

(b) satisfy himself that the *covenants in the trust deed are not prejudicial to the interest of the debenture holders*;

(c) *call for periodical status or performance reports* from the company;

(d) *communicate promptly to the debenture holders defaults*, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;

(f) *ensure that the company does not commit any breach of the terms of issue of debentures* or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;

(g) *inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;*