

## CHAPTER 3 Provisions as to debentures

### Liability of trustees for debenture holders

422. (1) Subject to the provisions of this section, the following provision shall be void, namely, any provision contained—

- (a) in a trust deed for securing an issue of debentures, or
- (b) in any contract with the holders of debentures secured by a trust deed,

in so far as it would have the effect of exempting a trustee of it from, or indemnifying him or her against, liability for breach of trust where he or she fails to show the degree of care and diligence required of him or her as trustee, having regard to the provisions of the trust deed conferring on him or her any powers, authorities or discretions.

(2) Subsection (1) shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release, or

(b) any provision enabling such a release to be given—

(i) on the agreement to the provision of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where 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.

(3) Subsection (1) shall not operate—

(a) to invalidate any provision in force on 1 April 1964 so long as any person then entitled to the benefit of that provision or afterwards given the benefit of it under subsection (4), remains a trustee of the deed in question, or

(b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him or her while any such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given either—

(a) to all trustees of the deed present and future, or

(b) to any named trustee or proposed trustees of the deed,

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed, or if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.