

4.1 Regulations governing issue of debentures.

4.1.1 Provisions for issue of Debentures as per Companies Act, 2013

4.1.2 Provisions for issue of Debentures as per Companies (Share capital and Debentures) Rule 2014

4.1.3 Requirements as per SEBI

4.2 Procedure for issue of Debentures**4.3 Debentures Trustees****INTRODUCTION :**

Companies prefer issuing debentures to raise funds as they can be repaid after a long period. A company can make public issue of debentures only if :

- 1) The company or its promoters or its Directors have not been prohibited from accessing the securities market by SEBI.
- 2) The company or its promoters or its Directors have not been declared as a willful defaulter or has not defaulted in repaying any principal or interest on any debt securities for a period of more than 6 months.

In this chapter, we will learn about the various regulations or provisions related to issue of debentures and the procedure for issuing debentures.

4.1 REGULATIONS GOVERNING ISSUE OF DEBENTURES

A company issuing debentures has to comply with the provisions of the Companies Act, 2013, Companies (Share Capital and Debentures) Rules, 2014, RBI Guidelines and SEBI's various regulations.

Depending upon the type of Debenture, Company has to fulfill the following provisions/regulations :

Act/Regulations/Guidelines	Provisions
1) Companies Act, 2013, Section 71	→ Contains provisions for issue of Debentures.
2) Companies (Share Capital and Debentures) Rules 2014, Rule-18.	→ Contains provisions for issue of secured debentures.
3) SEBI (Issue and Listing of Debt Securities) Regulations, 2008.	→ Covers provisions for issue and listing of Debentures which are not convertible, either into wholly or partly into Equity shares. It is applicable if debentures are issued through public offer, private placement and for listed debentures. As per these provisions company has to follow disclosure requirements as applicable to public issue of equity shares.

Act/Regulations/Guidelines	Provisions
4) SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009	→ Provisions for issue of debentures and listing of debentures that are convertible, either partially, fully or optionally into listed or unlisted equity shares. As per these provisions, a company has to follow the same disclosure norms as applicable to equity shares.
5) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.	→ Provisions which a listed company issuing non-convertible debentures, Perpetual debt instruments, etc. has to fulfill. The provisions relate to the various listing conditions which a company has to comply with.
6) RBI Guidelines	→ Meant for banks which raise capital by issuing non-equity instruments.

A company can issue secured as well as unsecured debentures. It can issue non-convertible debentures or debentures which can be converted fully or partly into equity shares. All debentures, are redeemable i.e. have to be repaid. Company can issue debentures to its members or make a public offer or offer it even through private placement.

Company can also list its debentures on Stock Exchanges.

The Board of Directors of a company has the authority to issue debentures. However, the Board can use their borrowing powers only up to the limit permitted by the Articles of Association. If in case, the Board wants to increase its borrowing powers, they have to get the approval of shareholders in a general meeting through a special Resolution.

Provisions For The Issue of Debentures as per

Companies Act, 2013	Companies (Share Capital and Debentures) Rules 2014	SEBI Regulation
1. No voting rights	1. Tenure of secured Debentures	1. Minimum Subscription
2. Types of Debentures	2. Create charge on Assets	2. Retention of over subscription
3. Payment of Interest and Redemption.	3. Appointment of Debenture Trustees.	3. Underwriting.
4. Debenture Certificate	4. Create Debenture Redemption Reserve.	4. Credit Rating.
5. Create Debenture Redemption Reserve		
6. Appoint Debenture Trustees		

Companies Act, 2013	Companies (Share Capital and Debentures) Rules 2014	SEBI Regulation
7. Debenture Trustees can approach NCLT (National Company Law Tribunal) 8. Impose Restrictions 9. Punishment for contravention of provisions of the Companies Act.		

4.1.1 Provisions for issue of debentures as per Companies Act, 2013.

Following are some of the provisions of the Act which a company has to comply while issuing debentures :

- 1. No voting rights :** A company cannot issue debentures with voting rights. Debenture holders are creditors of the company and so they do not have any voting rights except in matters affecting them.
- 2. Types of Debentures :** A company can issue secured or unsecured debentures and fully or partly convertible debentures or non-convertible debentures. To issue convertible debentures, a Special Resolution has to be passed in the General Meeting. All debentures are redeemable in nature.
- 3. Payment of interest and redemption :** A company shall redeem the debentures and pay interest as per the terms and conditions of their issue.
- 4. Debenture Certificate :** Company has to issue Debenture certificate to the debenture holders within 6 months of allotment of Debentures.
- 5. Create Debenture Redemption Reserve :** Company has to create a Debenture Redemption Reserve Account out of profits of the company available for payment of dividend. This money can be used only for redemption of debentures. As per Companies (Share Capital and Debentures) Amendment Rules 2019, MCA has removed Debenture Redemption Reserve requirement for Listed companies, NBFCs and Housing Finance Companies.
- 6. Appointment of Debenture Trustees :** If the company issues prospectus or invites more than 500 people, (either to Public or its Member) company has to appoint one or more Debenture Trustees. Debenture trustees protect the interest of the debenture holders. Company has to appoint trustees by entering into a contract with them called as Debenture Trust Deed.

Debenture Trustees : They are institutions that protect the interest of Debenture holders.

- 7. Debentures Trustees can approach NCLT :** Debenture Trustees have to redress the grievances of debenture holders. If the company defaults in repaying the principal amount, on maturity or defaults in paying interest there on, the Debenture Trustees can approach

the National Company Law Tribunal for redressal. NCLT can direct a defaulting company to repay the principal amount or interest.

Grievances : Complaints

Redressal : Remedy or compensation.

8. **Impose restrictions :** When the Debenture Trustee is of the opinion that the assets of the company are insufficient or likely to become insufficient to redeem the principal amount of debentures, it may approach the NCLT. NCLT can order a company to restrict incurring further liabilities so as to protect the interest of the debenture holders.
9. **Punishment for contravention of provisions of the Companies Act :** If the company fails to comply with any provisions of the Act, then the company and its officers shall be liable to pay fine or imprisonment or both as prescribed in the Act.

4.1.2 Provisions as per Companies (Share Capital and Debentures) Rules, 2014 (i.e. Rule 18)

If a company issues secured debentures, company must fulfill the following conditions :

1. **Tenure of secured debentures :**

All secured debentures should be redeemed within 10 years from the date of its issue. Only certain companies like companies engaged in Infrastructure Projects, or companies permitted by the Ministry of Corporate Affairs, Central Govt. or RBI can issue debentures beyond a period of 10 years but not exceeding 30 years.

2. **Create charge on assets :** Company has to create a charge on the assets of the company or its subsidiary company or holding company. The value of charge should be adequate to cover the entire value of debentures issued and interest to be paid on it. If a Government company issues secured debentures which has Central or State Government's guarantee, then it need not create any charge on its assets.
3. **Appointment of Debenture Trustees :** Before issuing prospectus or offer letter, the company has to appoint a Debenture Trustee. Company also has to execute a Debenture Trust Deed. The Deed contains the terms and conditions agreed upon by the company and the Trustees and clearly states the role of the Debenture Trustee.
4. **Create Debenture Redemption Reserve :** Company has to create a Debenture Redemption Reserve account out of the profits available for payment of dividend. Company has to maintain at least 25% of the value of its outstanding debentures in the Debenture Redemption Reserve Account. Company has to invest or deposit on or before 30th April each year, a sum not less than 15% of the amount of its debentures maturing during the year ending on 31st March of the next year. Money from this account is used for redemption of debentures.

4.1.3 Requirements as per SEBI for issue of Debentures :

1. **Minimum subscription :** SEBI (Issue and Listing of Debt securities) Regulation, 2008 Regulation-12 state the minimum subscription to be collected by a company.

As per SEBI, the minimum subscription for public issue of debentures is 75% of base issue size i.e. ₹ 100 crores. If the minimum subscription is not received, the entire money received should be refunded within 12 days from the date of closure of the issue.

2. **Retention of over subscription :** Company can retain over subscription money up to maximum 100 % of the base issue size or any lower limit as specified in the offer letter or letter of offer or prospectus.
3. **Underwriting :** Company may enter into an underwriting agreement with underwriters for its public issue of debentures. Appointment of underwriters must be mentioned in the offer letter or letter of offer or prospectus.
4. **Credit Rating :** SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 states that companies should get credit rating for issuing debentures.

As per SEBI, Companies making a public issue or right issue of convertible debentures must obtain credit rating from one or more credit rating agencies. The rating should be mentioned in the offer letter or letter of offer or prospectus.

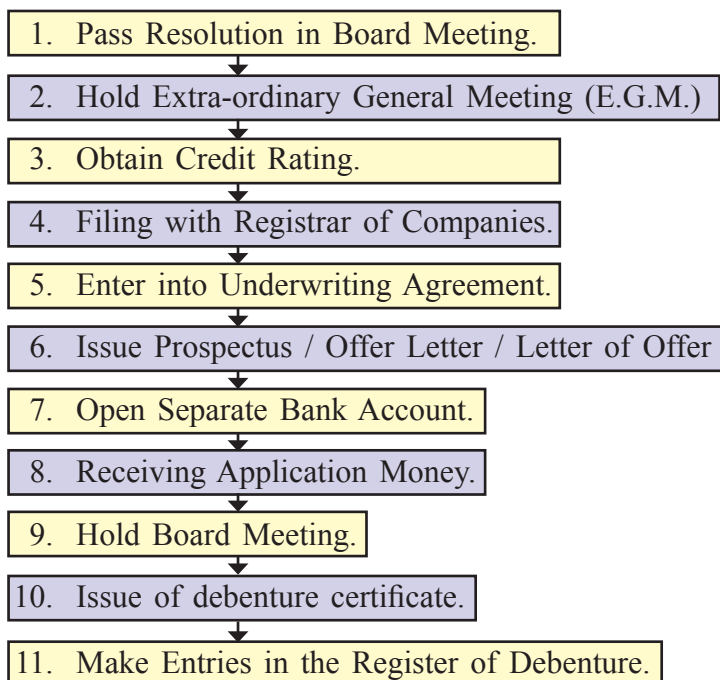
- i) *Credit Rating - Rating given to the debt securities by a credit Rating Agency which indicates the credit risk level.*
- ii) *Credit Rating Agency - Agencies like CRISIL, CARE, etc. which rates the credit worthiness of a company issuing debentures, deposits and other debt securities.*

Additional Information

CRISIL Rating scale for long Term Debt instruments including debentures.

Rating	Meaning	Rating	Meaning
CRISIL AAA	Highest Safety	CRISIL B	High Risk
CRISIL AA	High Safety	CRISIL C	Very High Risk
CRISIL A	Adequate Safety	CRISIL D	Default
CRISIL BBB	Moderate Safety		

4.2 PROCEDURE FOR ISSUE OF DEBENTURES



Following is the procedure to be followed by a company issuing debentures –

- 1. Pass resolution in Board Meeting :** In the Board Meeting following resolution will have to be passed :
 - i) amount and type of debentures to be issued and the terms and conditions for issue.
 - ii) approve prospectus or offer letter or letter of offer.
 - iii) approve appointment of Debenture Trustees and get their written consent.
 - iv) authorize Board to create charge on assets of the company.
 - v) call Extra-ordinary General Meeting if the Board's borrowing powers need to be increased.
 - vi) authorizes Board to open a separate bank account for receiving money from applicants.
- 2. Hold Extra-ordinary General Meeting (EGM) :** If the borrowing powers of the Board is to be increased, EGM must be held to get the shareholders' approval through a Special Resolution.
- 3. Obtain Credit Rating :** Company gets its debentures rated by one or more Credit Rating Agencies. The ratings must be mentioned in the prospectus/offer letter/Letter of offer.
- 4. Filing with Registrar of Companies :** Secretary has to file the Special resolution and copy of Prospectus, offer letter / Letter of offer with Registrar of Companies within 30 days of Board Meeting.
- 5. Enter into underwriting agreement :** Company enters into an underwriting agreement for underwriting its debenture issue.
- 6. Issue prospectus / letter of offer / offer letter :** Company issues prospectus, if it is inviting the public to buy its debentures. Offer Letter is issued if a company makes private placement and Letter of offer for Rights Issue.
- 7. Open Separate Bank Account :** Company opens a separate bank account in a scheduled Bank to receive the money from the applicants.
- 8. Receiving application money :** Subscribers will submit their application along with the required amount to the specified bank within the time period mentioned in the prospectus or letter of offer / Offer Letter.
- 9. Hold Board Meeting :** After the issue closes, a Board Meeting is held to decide and approve allotment of debentures. Board also approves creation of charges on the company's assets.
- 10. Issue of Debenture certificate :** The allotment procedure has to be completed within 60 days from the receipt of application money. Company has to issue Debenture certificate within 6 months of allotment of debentures.

11. Make entries in Register of Debenture holders : Secretary has to make entries in the Register of Debenture holders within 7 days after the Board approval of allotment. However, if debentures are issued in demat form, company does not maintain the Register of Debenture holders.

4.3 DEBENTURE TRUSTEES :

A company which issues prospectus or invites more than 500 persons to buy its debentures has to appoint one or more Debenture Trustees. Companies issuing secured debentures also must appoint Debentures Trustees.

Debentures Trustees are institutions which protect the interest of the debenture holders. The company creates a charge on its movable or immovable assets or assets of its subsidiary company or holding company. Charge is created in favour of the Debenture Trustees. The Trustees become the custodian of the assets on which charge has been created.

Debenture Trustees are appointed before prospectus or letter of offer/offer letter is issued. The Trustees must give a written consent to act as Debenture Trustees. The prospectus or letter of offer/offer letter must mention the names of Debenture Trustees.

Debenture Trust Deed :

Company enters into a contract with one or more Debenture Trustees. The terms and conditions of the agreement is written in the Debenture Trust Deed. It is a legal instrument conveying the assets of a company to the Trustees.

The Deed also defines the rights of debenture holders and the duties and powers of Debenture Trustees. Company has to execute the Deed with the Deposit trustees. Members as well as debenture holders can inspect the deed and also get a copy of it by paying a certain fee.

Activity :

- (1) Find out about the Debenture Trustee Services offered by IDBI Trusteeship Service Ltd.
- (2) Find out two institutions offering Debenture Trustee Services in India.

SUMMARY

- Companies prefer issuing debentures as they can be repaid after a long time.
- Companies can issue-secured or unsecured debentures, Non-convertible Debentures or convertible debentures either fully or partially convertible or redeemable debentures. Debentures can be listed on stock exchanges.
- Company can issue debentures to its members, public or make private placement.
- Companies have to comply with the provisions as per the companies Act, 2013, Companies/Share Capital and debentures, Rules, 2014 and regulations of SEBI.
- Company appoints one or more Debenture Trustees to protect the interest of Debenture holders. Debenture Trust Deed contains the terms and conditions agreed between the company and Debenture Trustee.

EXERCISE

Q.1 A) Select the correct answer from the options given below and rewrite the statements.

1. A company cannot issue with voting rights.
a) Equity shares b) Debentures c) Securities
2. A company can issue convertible debentures.
a) Only partly b) Only fully c) Partly or fully
3. Money from Account is used for redemption of debentures.
a) Capital b) Debenture Redemption Reserve c) Profit or loss
4. protects the interest of debenture holders.
a) Debenture Trustees b) Debenture holders c) Redemption Reserve
5. Secured debentures must be redeemed within from the date of its issue.
a) 10 days b) 10 years c) 15 years
6. A company issuing debenture must create a charge on the assets of the company.
a) Secured b) Unsecured c) Redeemable
7. Debenture certificate must be issued within of allotment of debentures.
a) 3 months b) 6 months c) 60 days
8. The details of allotment of Debentures must be entered in
a) Register of debenture b) Register of members c) Register of creditors
9. A company which issues prospectus or invites more than 500 persons to buy its debenture has to appoint
a) Register of companies b) Debenture holders c) Debenture trustees
10. The contract between company and Debenture trustees of companies is called as
a) Debenture trust deed b) Letter of offer c) Prospectus
11. Procedure for allotment of Debenture should be completed within from the date of receipt of applications.
a) 6 months b) 3 months c) 60 days

B) Match the pairs.

Group 'A'		Group 'B'	
a)	Debenture Trustees	1)	Power to issue debentures
b)	Debenture holders	2)	Protects interest of shareholders
c)	Charge on assets	3)	Secured debentures
d)	Board of Directors	4)	NCLT
e)	Debenture certificate	5)	No voting rights
		6)	Unsecured debentures
		7)	Protects interest of debenture holders
		8)	Voting rights
		9)	Proof of ownership of shares
		10)	Issued within 6 months of allotment of debentures

C) Write a word or a term or a phrase which can substitute each of the following statements.

1. Type of resolution needed to issue convertible debentures.
2. Account to be created for redemption of debentures.
3. Institution appointed by company to protect the interest of debenture holders.
4. Period within which secured debentures should be redeemed.
5. Type of debentures on which company has to create a charge on its assets.
6. The document which contains terms and conditions agreed upon by the company and the Debenture trustees.
7. Time period within which the procedure for allotment of debentures is to be completed from the date of receipt of applications.
8. Period within which debenture certificate must be issued by a company.
9. Institution which redresses grievances of debenture holders.
10. Authority which has power to issue debentures.

D) State whether the following statements are true or false.

1. Debenture holders have no voting rights.
2. Company cannot issue non-convertible debentures.
3. Special Resolution is needed to issue convertible debentures.
4. Debentures holders are paid interest.
5. Debenture Trustees can not approach NCLT to redress grievances of debenture holders..
6. All secured debentures should be redeemed within 20 years from date of its issue.
7. Company has to create a charge on its assets when it issues secured debentures.

8. Debenture trustees are appointed to protect the interest of shareholders.
9. Debenture certificate is issued within 6 six months of allotment of debentures.
10. After allotment of Debentures names of Debenture holders are entered in the Register of Members.

E) Find the odd one.

1. Debenture holders, Interest, Dividend.
2. Debenture Trustees, Court, NCLT.
3. Secured Debentures, Convertible debentures, Irredeemable debentures.
4. Debenture trustees, Trust Deed, Shareholders.

F) Complete the sentences.

1. A legal instrument conveying the assets of a company to the Debenture trustees is called
2. To protect the interest of Debenture holders, a company appoints
3. On receipt of application and money, the procedure for allotment of debentures should be completed within
4. Authority to create charge on company's assets is with the
5. Secured debentures should be redeemed within
6. To stop a company from incurring further liabilities, the Debenture trustee can approach
7. A company which issues prospectus or invites more than 500 persons to subscribe for its debentures, has to appoint
8. Return on investment in debentures is called
9. For public issue of debentures of ₹ 100 crores, minimum subscription should be
10. For public issue or rights issue of convertible debentures, as per SEBI, a company must obtain

G) Select the correct option from the bracket.

Group 'A'		Group 'B'	
a)	Debenture Trustees	1)
b)	2)	Charge on assets
c)	Register of Debenture	3)
d)	4)	Debenture certificate
e)	No voting rights	5)

(Issued within 6 months of allotment, Names of debentureholders, Secured debentures, Trust deed, Debenture holders.)

H) Answer in one sentence.

1. Who are debenture holders ?
2. What do debenture holders receive as return on investment ?
3. Whom does the company appoint to protect the interest of debentureholders ?
4. Within what period should secured debentures be redeemed ?
5. Name the document which is an agreement between the debenture trustee and company.
6. Who has the authority to create charge on assets of a company ?
7. Name the meeting in which approval for increasing the borrowing powers of Board of Directors is passed.
8. Within what period should the debenture certificate be issued ?
9. What is the minimum subscription that a company must collect for an issue of debentures of ₹ 100 crores ?
10. When should a company appoint a credit rating agency ?

I) Correct the underlined word and rewrite the following sentences :

1. The details of debentureholders are entered in Register of Members.
2. Secured debentures must be redeemed within 15 years from the date of its issue.
3. A company issuing irredeemable debentures must create a charge on assets of the company.
4. Return on investment in debentures is dividend.
5. Debenture Trustees redress the grievances of shareholders.
6. Debenture certificates are issued within 3 months of allotment of debentures.
7. Procedure for allotment of debentures should be completed within 90 days from date of receipt of applications.
8. To rate its debentures a company appoints underwriters.

J) Arrange in proper order.

1. a. Obtain Credit Rating.
b. Entry in register of debenture
c. Receive application with money
2. a. Issue debenture certificate
b. Issue prospectus
c. Open bank Account
3. a. Hold Board Meeting for allotment
b. Issue debenture certificate
c. Receive application with money

Q.2 Explain the following terms/concepts.

- | | |
|--------------------------|-------------------------|
| 1. Debenture certificate | 2. Debenture trustee |
| 3. Charge on assets | 4. Debenture trust deed |

Q.3 Study the following case / situation and express your opinion.

1. Rose limited company proposes to issue debentures to the public to raise funds. After discussions, the Board of Directors have decided to issue secured, Redeemable non-convertible debentures with a tenure of Ten years. Please advise the Board on following matters :
 - a. Should the company appoint Debenture trustee ?
 - b. Should the company create a charge on its assets ?
 - c. Can the tenure of debentures be less than ten years ?
2. Violet Ltd. company plans to raise ₹ 10 crores by issuing debentures. The Board of Directors has some queries. Please advise them on the following –
 - a. Can the company issue unsecured debentures?
 - b. Can they issue irredeemable debentures?
 - c. As the company is offering debentures to its members, can such debentures have normal voting rights ?
3. DDS Financial plans to raise ₹ 10 crores by issuing Secured, Non-convertible debentures. However, as per the Articles of Association, the Board of Directors has authority only to raise upto 5 crores. They are also considering whether to go for private placement or make public offer. Please advise them on the following –
 - a. What can be the maximum tenure of the debentures to be issued ?
 - b. Is the proposed issue within the borrowing powers of the Board ?
 - c. Within what period should company issue Debenture certificate ?

Q.4 Answer in brief.

1. State any four provisions of Companies Act 2013 for issue of debentures.
2. What is debenture trust deed ?
3. Who are debenture trustees ?

Q.5 Justify the following statements.

1. A company has to create charge on its assets for issuing secured debentures.
2. Debenture trustees is appointed by a company issuing debentures.
3. A company can issue only certain types of debentures.

Q.6 Answer the following questions.

1. Briefly explain the provisions of Companies Act, 2013 for issue of debentures.
2. Explain briefly the procedure for issue of debentures.

