

ISSUE OF DEBENTURES BY A PRIVATE LIMITED COMPANY.

STEPS INVOLVED IN ISSUE OF DEBENTURE

1. POSITION IN LAW:

Page | 1

(a) Under the Companies (Acceptance of Deposit) Rules, 1975 “any amount raised by issue of debentures (including convertible debentures) secured by the mortgage of any immovable property of the company and that the market value of the immovable property secured is higher than the amount of debentures issued” is not considered to be a **DEPOSIT**.

(b) Under Section 3(1)(d) of the Act, a Private Company is prohibited from accepting **Deposit** from persons other than its Directors, Members and their relatives.

(c) Hence, the Private Company must issue Debentures only as a Secured Debenture.

2. APPROVALS:

The following approvals are required to be obtained by the Company:

Approval Level	Nature of approval
Board	For issue of Debentures under Section 292(1)(b).
Board	Creation / Declaration of Trust
Board	Appointment of Debenture Trustees (Section 117B)
Board	Approval of Draft Trust Deed
Board	Approval of the Form of Debenture Certificate.
Letter from Trustees	Consent from the Debenture Trustees to act as Trustees.

No approvals are required to be obtained under Section 293(1)(a) and (d) since, the Section does not apply to Private Limited Companies, unless it is a Subsidiary of a Public Company.

SUGGESTED RESOLUTIONS FOR THE ABOVE:

APPROVAL OF BOARD TO ISSUE DEBENTURES:

RESOLVED THAT pursuant to Section 292, the Company do and hereby issue _____ debentures of Rs. ____/- each.

Page | 2

DECLARATION OF TRUST:

The board discussed the requirement of appointment of trustees for the issue of Debentures as required under Section 117A of the Companies Act, 1956. Thereafter it was:

RESOLVED THAT the Company do and hereby constitute a Trust for the purpose of issue of Debentures and the Trustees be appointed who shall act so in connection with the debentures to be issued and allotted and shall hold the property of the company in trust for the timely and due payment of interest and redemption of debentures.

APPOINTMENT OF TRUSTEES:

The Board discussed the matter relating to appointment of Debenture Trustees and decided to appoint _____ as the Trustees for the Debentures. Thereafter, it was

RESOLVED THAT the Company do and hereby appoint M/s _____, as the Trustees who have conveyed in writing their acceptance to act as Trustees for the issue of ___% _____ of Rs. ____ each amounting to Rs. ____/- .

APPROVAL OF DEBENTURE CERTIFICATE FORMAT:

The Chairman placed before the Board a draft format of the Debenture Certificate to be issued to the Debentureholders of the proposed issue and after discussion it was:

RESOLVED THAT the Board do and hereby approve the format of the Debenture Certificate as placed before the Board and initialed by the Chairman for the purpose of identification, and that the certificate in the approved format be issued to the persons to whom the Debenture would be issued.

APPROVAL OF TRUST DEED:

The Chairman placed before the Board the draft Trust Deed to be entered with the Debenture Trustees of the Company for the issue of ___% ___ debentures of Rs. ___/- each. The Board then after discussion

Page | 3

RESOLVED THAT the Debenture Trust Deed as per the draft placed before this meeting and initialed by the Chairman for the purpose of identification, be and is hereby approved and that Mr. _____, Director and Mr. _____, Director be and are hereby authorised to execute the same on behalf of the Company.

2. ALLOTMENT

Since, the Company proposes to place the Debenture privately, it is suggested that a Letter of Offer is also made which would be circulated amongst the target buyers. The draft letter of offer is also required to be approved by the Board. The conditions relating to the payment for subscription, the Security, the rate of interest on the Debentures and the period by which the Debentures would be redeemed would have to be specified.

On receipt of the application from the person(s) subscribing for the Debentures, the Board needs to make the allotment.

SUGGESTED RESOLUTION FOR ALLOTMENT OF DEBENTURES:

The Chairman informed the Board that ___ has agreed to subscribe to the Debentures of the Company and has paid Rs. ___/- as specified in the Letter of Offer. He also informed that as per the Letter of Offer the Debentures are required to be allotted on or before ___th ____, 200_. After deliberation the Board passed the following resolution:

RESOLVED THAT the Board do and hereby constitute and allot to _____, ___ non-convertible debentures of Rs. ___/- each.

RESOLVED FURTHER THAT the terms of issue of the aforesaid debentures allotted to _____ be and is hereby confirmed as follows:

TERMS	___ NCD's
Rate of Interest	
Moratorium Period of Interest	
Moratorium Period of Principal.	
Redemption (per debenture)	
Security	
Trustees	

RESOLVED FURTHER THAT the said Debentures bearing the following distinctive Nos. be and are hereby allotted to _____, on private placement basis as under:

Name of Allottee	No. of Debentures	Distinctive Numbers	Debenture Certificate No.

RESOLVED FURTHER THAT the Debenture Certificates in the format approved, bearing the above said numbers be issued under the Common Seal of the Company, to the Debentureholder duly signed by Mr. _____, Chairman / Director and Mr. _____, Director, and countersigned by Mr. _____, Authorised Signatory of the Company.

RESOLVED FURTHER THAT the above named persons are also severally authorised to execute and deliver on behalf of the Company all deeds, documents, declarations, undertakings and other writings and to do all such other acts and things as may be required with regard to the debenture issue.

RESOLVED FURTHER THAT a deposit of title deeds of the property of the company as described below be made to _____, having their registered office at _____, and that Mr. _____, Managing Director of the Company be and is hereby authorised to call on the authorised office of the said trustees and convey his oral consent for creating the equitable mortgage.

3. EQUITABLE MORTGAGE

The security is to be created by way of Equitable Mortgage by way of deposit of title deeds of the immovable property of the Company. The deposit is required to made with the Trustees. The procedure relating to this is as follows:

- The Board should authorise either of the Directors / Officer of the Company to Deposit the Title Deeds with the Trustees.
- The person so authorised to call on the Trustee and Deposit the same.
- The person so authorised should also convey the intention of the Company to create an Equitable Mortgage to the Trustee and instruct him to hold the Title Deeds till the time the debentures are redeemed in full.
- This consent is usually ORAL, and there would be no documentary proof for the same, for having deposited it.
- Once the title deeds are deposited, the person so authorised should write to the Trustee so as to confirm the Deposit of Title Deeds by way of a letter. The format of the letter is given below:

<p>To</p> <p>____Trust Company Limited Address _____ _____</p> <p>Dear Sir,</p> <p>We are writing his letter to confirm that we have deposited on _____with you, the Debenture Trustees for Debentures issued / privately placed by our Company, on _____ in the presence of Mr./Mrs. _____, and Mr./Mrs. _____, the title deeds dated _____, relating to the property of our company situated at _____ described below in detail (herein under referred to as the "SAID PROPERTY") with the intention of creating an equitable mortgage over the property by way of security for an amount of Rs. _____ – __ Debentures of Rs. __ each.</p> <p><u>DESCRIPTION OF THE PROPERTY</u></p> <p>Thanking you. Truly yours, For XXX Private Limited</p> <p>_____</p>
--

4. FILING OF MODIFICATION OF CHARGE WITH THE REGISTRAR OF COMPANIES:

After creation of the Equitable Mortgage the Company should file Form 8, if there is no Series of Debentures issued. We would like to clarify that Form 10 is to be filed only when a company issues a "Series of Debentures" containing any *pari passu* charge to the benefit of the debenture holders of that series.

Page | 6

5. TIME LIMIT FOR ISSUE OF DEBENTURE CERTIFICATE

The time-limit for the issue of Debenture Certificate is 3 months from the date of allotment. If the Company is of the opinion that it might not be able to issue the Debenture Certificate within 3 months, then it is suggested that an application is made to the CLB requesting for extending the time-limit for issue of Debenture Certificate.

6. CREATION OF DEBENTURE REDEMPTION RESERVE:

As per Section 117C of the Companies Act, 1956, a Debenture Redemption Reserve (DRR) needs to be created. From the profits of the Company each year, adequate amounts need to be credited, which should be utilised for redemption, and not for any other purpose.

7. NO NECESSITY TO FILE FORM 2 FOR ALLOTMENT OF DEBENTURES:

We would like to clarify that **Form 2 - 'Return of Allotment'** being a requirement under Section 75 of the Companies Act is limited to allotment of shares and it does not in its scope cover Allotment of Debentures.

8. MAINTENANCE OF REGISTER OF DEBENTURE-HOLDERS

Under Section 152 of the Act, the Company is required to maintain a Register of Debenture-holder and we append herewith the format of the Register:

9. PAYMENT OF STAMP DUTY ON THE DEBENTURES

The stamp duty as prescribed under the Stamp Act, as in force in Karnataka, required to be affixed to the Debenture Certificate on the face of the same or in the form of attaching a separate sheet of paper and affixing the stamps on the same. The fact that the stamps so affixed forms part of the Certificate with the Certificate Number should be mentioned on the sheet so attached.

ALTERNATIVE MEATHOD:

Instead of affixing stamps on the debenture certificate or by attaching a separate sheet, there is also a provision to pay consolidated stamp duty. We give herebelow the procedure in connection with the same:

Page | 7

- A letter needs to be written to The Under Secretary, Dept. of Revenue, Ministry of Finance, North Block, Udyog Bhavan, New Delhi – 110 011 stating the facts of the case.
- The Ministry of Finance will issue a letter to the Secretary, Commercial Taxes Department of State of _____, directing them to issue necessary orders.
- The Commercial Tax Department would the issue a letter to the company directing that the amount of stamp duty be paid to the credit of the Government Account.
- On receipt of the letter, the company would have to arrange to pay the amount by way of a Demand Draft.
- The Superintendent of Stamps would then write to the Inspector General of Registration informing him about the consolidated duty having been paid.
- The IG Registration would then write to the Commercial Tax Department, asking them to issue a final order after a Gazette Notification.
- The Company would then be informed by the Commercial Tax Dept. informing that the order for payment of consolidated stamp duty has been gazetted along with a copy of the Gazette notification.
- Once the order is received then the Company can instead of affixing stamp duty can reveal on the face of the Debenture Certificate the fact that consolidated stamp duty has been.

Should you need any assistance, please do get in touch with us.

seshwar@eshwars.com

XYZ PRIVATE LIMITED

REGISTER OF DEBENTUREHOLDERS OF ----- % ----- NCD'S

Name : _____

Date of Entry: _____

Address: _____

Date of Exit: _____

Occupation: _____

DEBENTURES ACQUIRED								DEBENTURES TRANSFERRED							BALANCE HELD	
Date of Allotment or Registration of Transfer	No. of Instrument of Transfer	Transferor's Name	Transferor's Folio in Register	No. of Debentures Allotted / Transferred	No. and Date of Issue of Debenture Certificates	Distinctive No. of Debentures	Nominal Value of Debentures Allotted / acquired	Date of Registration of Transfer	Transfer No.	Transferor's Name	Transferee's Folio in the Register	No. of Debentures Transferred	Distinctive Numbers	Nominal Value of Debentures Transferred	No. of Debentures	Distinctive Numbers
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17