



CORPORATE EQUITY

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DECLARATION OF COPYRIGHT

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PUBLISHED EDITION 2022

Published by :

POLITEKNIK MELAKA

No. 2, Jalan PPM 10

Plaza Pandan Malim

75250 Melaka

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Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Hazira Saleh, 1973-

**CORPORATE EQUITY / WRITER: HAZIRA BINTI SALEH, ROSLEZAYTI BINTI AJEH,
NUR IZZATIE HUSNA BINTI ZAWAWI.**

Mode of access: Internet eISBN 978-967-0838-71-7

1. Stocks. 2. Capital stock. 3. Corporations--Finance. 4. Government publications--Malaysia. 5. Electronic books. I. Roslezayti Ajeh, 1984-. II. Nur Izzatie Husna Zawawi, 1997-. III. Title. 332.6322

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ACKNOWLEDGEMENTS

We would like to express our gratitude to the Almighty for giving us the strength, courage, and health to complete this eBook. We wish to extend our warm appreciation and gratitude to the many parties who have provided encouragement and helpful comments towards completing this e-book, *Corporate Equity in Company Law for Non-Law Students 1st Edition*.

We would also like to acknowledge the e-Learning Committee of Politeknik Melaka led by Ts Dr. Zulhisyam bin Saleh for the guidance and help in making the e-book a reality. Thank you for the *Bengkel Asas Penulisan eBook*. The workshop helped us a lot. We also owe our appreciation to the Head of Commerce Department, Pn Rosmaria binti Ismail, for giving us the opportunity. We are grateful to each of us because we are all working hard to ensure that this e-book has its of high quality and helps the advancement of knowledge in company law.

Above all, we would like to address our heartfelt gratitude to Mrs Hazira binti Saleh's family members, especially to Mr. Fadhlan Faizal bin Nuruddin, Mdm. Hajah Aminah binti Hashim, Ms. Nur Zulaiha binti Fadhlan Faizal, Mr. Muhammad Haziq bin Fadhlan Faizal and Nur Fariha binti Fadhlan Faizal.

We also wish to record special thanks and appreciation to Ms. Nur Izzatie Husna binti Zawawi's family members, especially to her mother Mdm. Mumtaz Bee binti Abdul Aziz and her farther, Mr. Zawawi bin Jaafar. We also record our thanks to Mdm. Roslezayti bin Ajeh's family. Thank you for have always been very supportive of our writing projects and we thank them for their unconditional love and support.

Finally, we thank Allah SWT who has given us the skill, ability and knowledge to complete this e-Book.

ABSTRACT

Companies Act 2016 is Malaysia's current statute for businesses (Act 777). The CA 2016 Corporate Equity is one of the topics in Company Law that students should learn. This is a straightforward handbook created for students who are not pursuing a law degree as an undergraduate. This e-book is appropriate for both novice and advanced students.

This e-book comprises narrative explanations and contains 7 subtopics, including self-reflection tasks to assist pupils. It begins with an Introduction to Corporate Equity, followed by Share Capital, Shares, Dividends, Debentures and Charge. All subtopics are broken up into "bite-size" sub-topics, which generally are the definitions, types, features, and differences. This e-Book also comprises of simple explanation to assist student for a better understanding regarding the topic. The emphasis of this e-book is on the basics of understanding regarding Corporate Equity. For this reason, the formative "self-testing" is also included to help the students understand their progress on the topic. Student learning is assisted by learning objectives at the beginning of the book, which were written to give a foundation in corporate equity.

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1.0 INTRODUCTION

COURSE LEARNING OUTCOME

After reading this chapter you should be able to explain the principles of law affecting financial resources and management in accordance with the rules and regulation provided by the Companies Act 2016 which are

- Share capital (Issued capital, Paid- up capital and Unpaid Capital)
- Classes of the shares (Ordinary shares and Preference shares)
- Types of dividends (Interim dividend, Final dividend, cumulative dividends and non-Cumulative dividends)
- Debentures (Sole debentures and Serial debentures. Features of Debentures)
- Charges. (Fixed charge and floating Charge)

WHO SHOULD READ THIS E-BOOK?

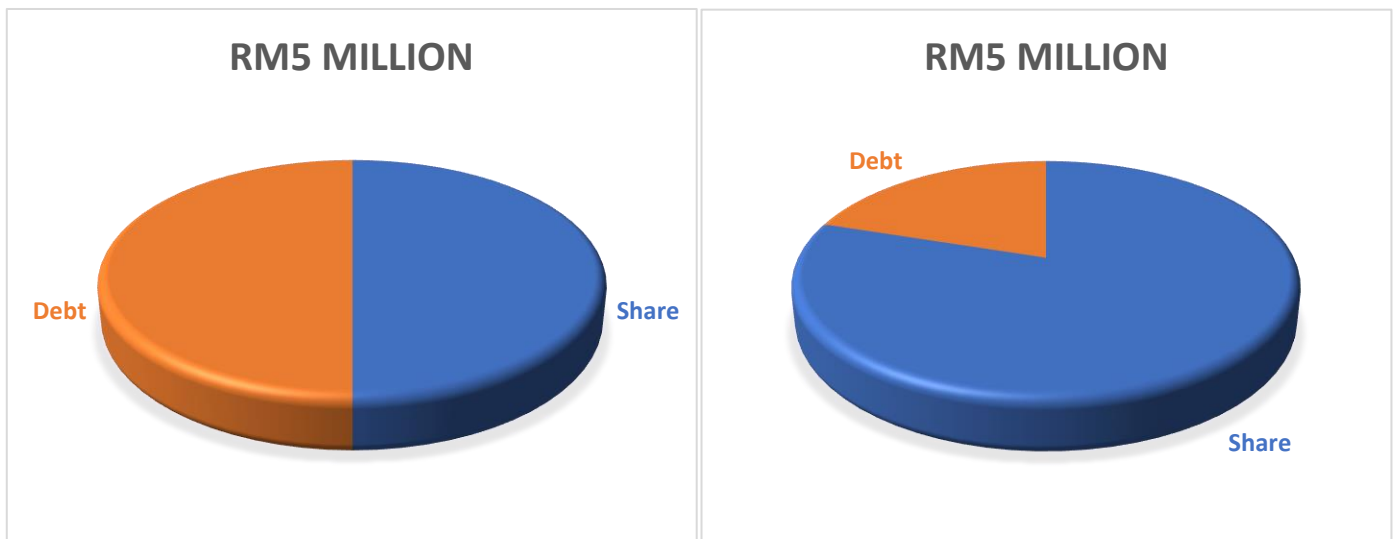
This e-book is written primarily for undergraduates other than law students because it aims to provide a fundamental understanding of Malaysian company law.

1.1. CORPORATE EQUITY

The current statute for the companies in Malaysia is the Companies Act 2016 (Act 777). It will be cited as The CA 2016, which replaced the Companies Act 1965.

The purpose of the incorporation of a company is usually to conduct business. Funding is needed to run the business. Typically, the company has the option of two sources, either from the issues of shares or debt, by issuing debentures. The company can also opt to use both at a certain percentage approved by the Board of Directors.

For example, suppose a company plans to buy RM5 million worth of assets. In that case, the company can get RM2.5 million from the shares and RM2.5 million from the debt. Or the other possible option is RM4 millions of shares and RM1 million of debt.



If someone buys/subscribes the company's shares, it means the person has the right of ownership of the company. Therefore, the person will share the business's success and failure. When the company declares profit, the company will pay dividends to the shareholder accordingly. Debt is something that the company do the borrowings for the long term. It is considered a liability for the company. The company can issue debenture as its debt instrument.

1.2. CAPITAL

1.2.1. SHARE CAPITAL

Capital is the most common source of finance for a company. According to Section 2 of the Companies Act 2016, share means issued share capital of a corporation and includes stock except where a distinction between stock and shares is expressed or implied. In simple words, share capital refers to funds a company raises from selling shares to investors/shareholders. There are 4 types of capital which are: -

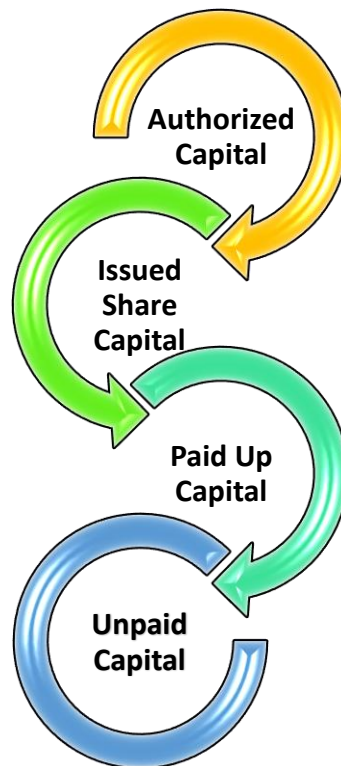


Figure 1: Types of Share Capital

1.2.2. Authorized Share Capital

Under the Companies Act 2016, there will be no longer authorized capital for a company. The Act has abolished it. Instead, a company is required to notify its issued share capital and paid-up capital to the Registrar. The Act is also introducing a new regime with no par value or nominal value for every company.

1.2.3. Issued Share Capital.

Issued share capital is the total number of shares issued by a company. The issue price of a share does not have to be paid when the share is issued. Public limited company can issue the

shares to the public while private company is prohibited from doing so. The members of the company have the right to issue the share through special resolution. If the Board of Directors (BOD) is authorized to allot and issues shares, the power will be exercised by the board by passing a board resolution. The BOD must act in accordance with their duties to the company.

Section 75(1) Unless the prior approval by way of resolution by the company has been obtained, the directors of a company shall not exercise any power

- a) To allot shares in the company;*
- b) To grant rights to subscribe for share in the company;*
- c) To convert any security into shares in the company: or*
- d) To allot shares under an agreement or option or offer.*

Section 75(1) of the Companies Act 2016 states that directors should not allot any shares, grant any rights to subscribe to shares, convert any security into shares, or allot any shares under any agreement for the company unless prior approval has been granted by the company through a resolution passed at the Annual General Meeting (AGM).

1.2.4. Paid-up capital.

Paid-up capital is the amount of money received by the company after issuing the shares. A company's issued share capital is not always the same as its paid-up capital. The proceeds will be utilised to fund the company's acquisition of assets or operations. A shareholder whose shares have been completely paid is under no duty to contribute further to a company that is in liquidation.

1.2.5. Unpaid Capital

It is the amount of capital that the shareholders have not yet paid. The company has the authority to issue calls for shareholders to pay the outstanding balance on their shares. The amount must be paid by the shareholders even if the firm goes into insolvent liquidation or is wound up. If the balance is needed to pay the company's creditors, the liquidator might seek payment from the shareholders.

1.3. SHARES

When someone becomes a shareholder, it is critical for that person to understand the various types of shares and which types are appropriate based on his or her preferences.

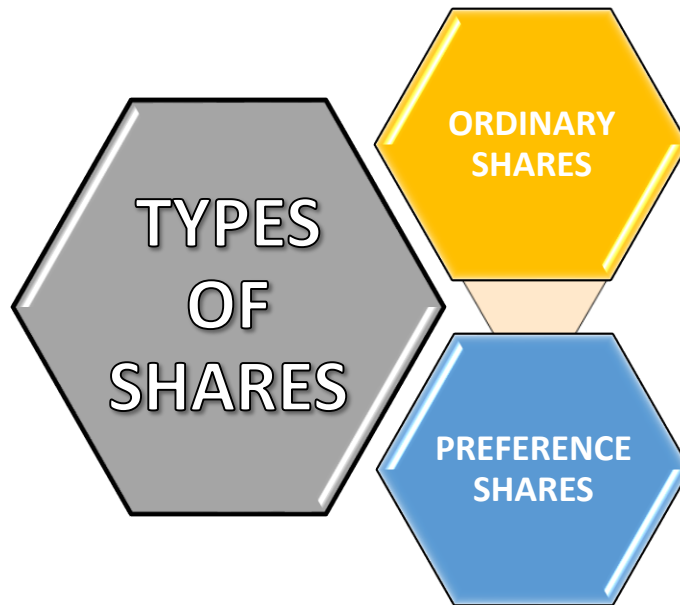


Figure 2: Types of Shares

1.3.1. Types of shares

In Malaysia, there are two types of shares:

- a. Ordinary shares
- b. Preference shares
- c.



- Ordinary shares are considered as the most common types of shares issued by companies in Malaysia.
- It is also generally regarded as equity investments.
- This type of shares is suitable for person that wish to execute some control and participate actively in earnings and the growth of the company.



- As the name suggested, a preference share gives the shareholder preferred treatment over the ordinary shareholders.
- However, preference shareholders have different rights than ordinary shareholders.

1.3.2. Differences of Ordinary Shares and Preference Shares

Company may issue different classes of the same types of shares or different types of shares. Different rights can be attached to different classes and types of shares for various purposes such as:

- To distinguish voting rights in a company;
- To prioritize distribution of dividends and assets of a company;
- The rate of dividends; and
- The preference during liquidation.

ORDINARY SHARES	TYPES	PREFERENCE SHARES
Ordinary shares confer the shareholders full voting rights that enable the shareholders to participate in the decision-making process of a company.	Voting rights	Preference shareholders typically do not have voting rights but do have a preference over other shareholders.
Ordinary shareholders receive their dividends after preference shareholders are paid.	Payment of Dividend	Dividends are paid first to preference shareholders before dividends are paid to other shareholders.

Payment for ordinary shares is not fixed. The rate of the dividend is determined by the board of directors annually. The board will resolve whether there is available profit for the distribution of a dividend for ordinary shareholders.	Rate of Dividend	The constitution of the company may confer on preferential shareholders the right to a fixed amount or rate of dividend, subject to the availability of profits of the company.
If the company can no longer pay its debts and went into liquidation, ordinary shareholders will be rank last in receiving any amount from the company.	Liquidation	If a company is insolvent, preference shareholders have priority over the shareholders to recover their investment funds back.

Table 1: The differences of Ordinary shares and Preference shares

Section 18(3) of the Companies Act 2016, In the case of a company having a share capital, every person whose name is stated in the application for the incorporation becomes the shareholder as specified in the application

The company secretary shall register all the members properly. The record must be well kept and maintained regularly. The register must contain information on the issuance and transfer of shares.

Section 97 of the Companies Act 2016 states that a company is no longer required to issue a share certificate to a shareholder unless it is required in the company's constitution. A shareholder can also apply for one to be issued for his/her record.

1.4. DIVIDENDS

Dividends are often known as the "fruits of investment," which means that they will be paid to the shareholders for the amount that they invested in a business. Paying dividends is the primary way for companies to distribute their retained profits and cash to their shareholders.

According to section 131 (1) of the Companies Act 2016, a company may only make a distribution of dividends to the shareholders out of its profits if the company is solvent. Section 132 of the Companies Act of 2016 states that certain conditions must be met before a dividend can be announced.

According to section 131 (1) of the Companies Act 2016, a company may only make a distribution of dividends to the shareholders out of the profits of the company available if the company is solvent. According to Section 132 of the Companies Act 2016, there are certain requirements that have to be fulfilled before a dividend can be declared.

Section 132 (1) Before a distribution is made by a company to any shareholder, such distribution shall be authorized by the directors of the company.

(2) The directors may authorize a distribution at such time and in such amount as the directors consider appropriate, if the directors are satisfied that the company will be solvent immediately after the distribution is made.

(3) For the purposes of this section, the company is regarded as solvent if the company is able to pay its debt as and when the debts become due within twelve months immediately after the distribution is made.

(4) If, after a distribution is authorized and before it is made, the director ceased to be satisfied on the reasonable grounds that the company will be solvent immediately after the distribution is made, the directors shall take all necessary steps to prevent the distribution from being made.

(5) without prejudice to any other liability, every director or officer of the company who willfully pays or permits to be paid or authorizes the payment of any improper or unlawful

distribution shall, on conviction, be liable to imprisonment for a term not exceeding five years or a fine not exceeding three million ringgit or both.

According to the said section, before a distribution is made by a company to any shareholder, such distribution must be authorized by the directors of the company and if the company decided to distribute the dividends on the said year, the company must ensure that they are able to pay its debts as and when the debts become due within twelve months immediately after the distribution is made. Failure to do so, the directors shall take all necessary steps to prevent the distribution from being made.

1.4.1. Types of Dividends

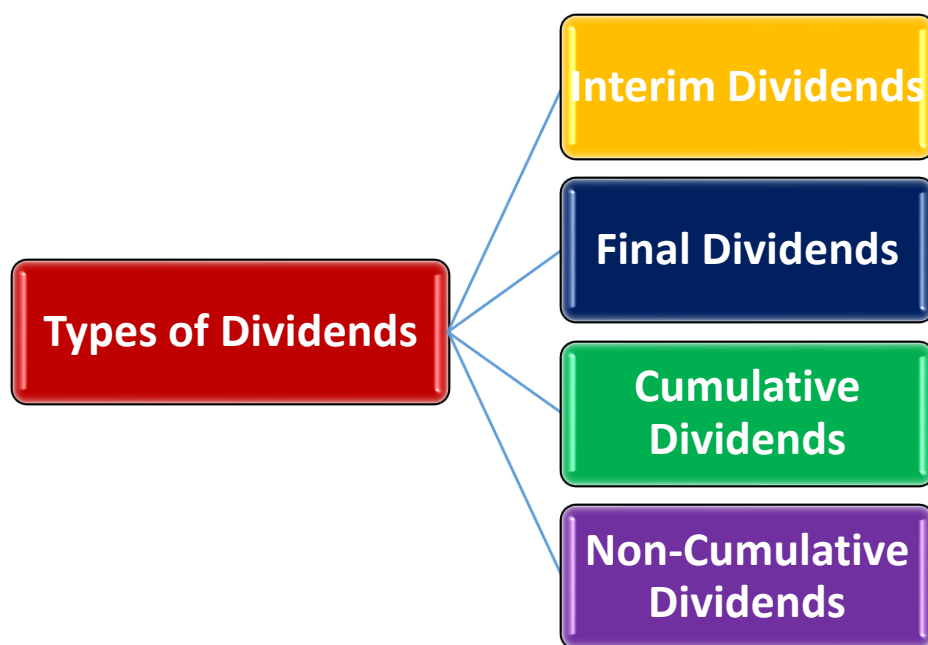


Figure 3: Types of Dividends



Interim Dividends

- An interim dividend is declared and paid prior to an Annual General Meeting and before full-year earnings.
- The company's Board of Directors is responsible for declaring an interim dividend, but it is up to the shareholders' approval.



Final Dividends

- An interim dividend is declared and paid prior to an Annual General Meeting and before full-year earnings.
- The company's Board of Directors is responsible for declaring an interim dividend, but it is up to the shareholders' approval.



Non – Cumulative Dividends

- Non-cumulative dividend is a type of dividends that does not pay the shareholders any unpaid dividends
- If a firm or a company is unable to pay its dividends on time, the shareholders cannot accumulate the dividend.
- Non-cumulative dividend loses its rights to any payment if it is not claimed within a year.



Cumulative Dividends

- Cumulative Dividends is a right that is given to the preference shareholders of a company.
- If a firm or a company is unable to pay its dividends on time, they must accumulate sufficient funds until it can make the payment.
- Cumulative dividends must be paid before common shareholders receive a dividend.

1.5. DEBENTURES

According to section 2 (1) of the Companies Act 2016, debentures include "debenture stock, bonds, notes, and any other securities of a corporation, whether constituting a charge on the assets of the corporation or not." A document in writing, usually under seal, issued as evidence of a debt or the granting of security for a loan of a fixed sum at interest (or both). The term is often used to describe loans (usually from banks) that are backed by charges, including floating charges, on the assets of a company.

Debentures featured in *Salomon v. Salomon & Co. Ltd.* When Salomon sold his business to Salomon & Co., it was paid in cash, shares, and a loan of 10,000. This loan of 10,000 was considered as a liability to Salomon & Co and when Salomon & Co wound-up, the loan had to be repaid since Salomon was a priority creditor.

When a company wants to increase its capital through debentures, the lender does not buy shares in the company but instead lends money in return for an interest payment. This interest payment is not dependent on profits, and lenders will normally evaluate the business for security to ensure that interest will be paid. If security is low, a lender will normally charge higher interest rates.

There are few characteristics to understand the principle and concepts of debentures. The features are:

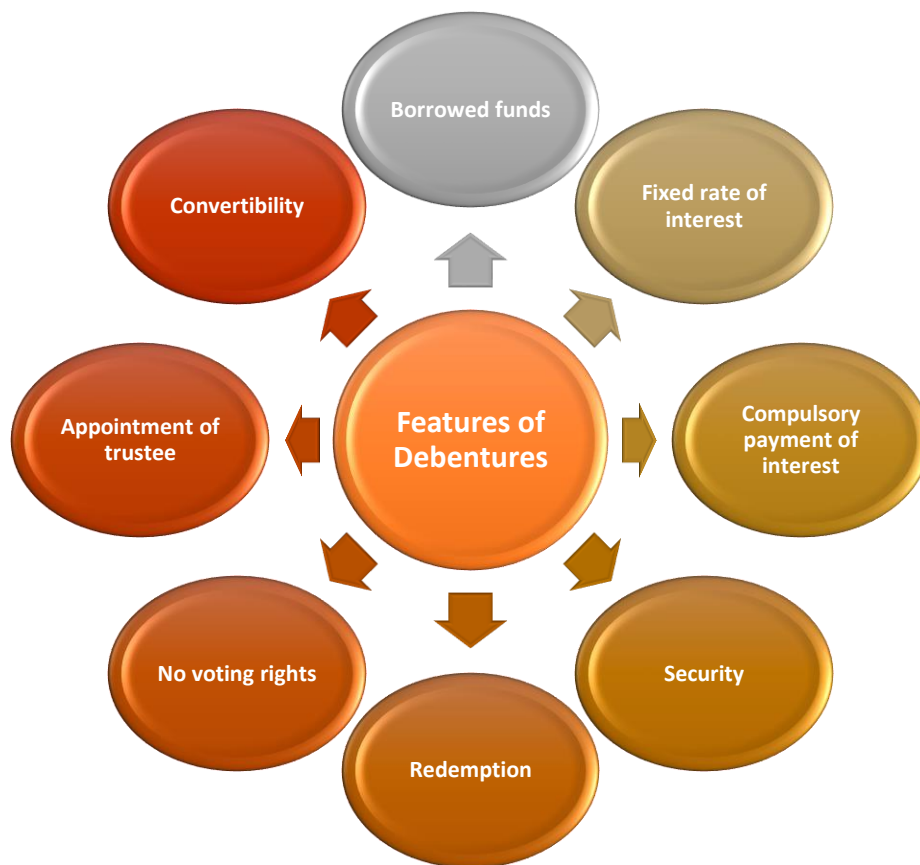


Figure 4: Features of Debentures

1.5.1. Debentures has unique features compared with other types of corporate equity.

Borrowed Funds

- The definition of debenture itself is known as a loan from the public.
- Thus, debentures are the capital funds that are borrowed by the company or firm from the public while seeking capital to run the company.
- However, in declaring a debenture, a company must aware that they need to repay the capital to the investors within a stipulated period of time.

Fixed Rate of Interest

- Debenture holders are entitled to a periodic payment of interest at an agreed rate prior to the investment.
- It is always issued at a fixed rate, which is payable annually to the investors as decided by the shareholders in the AGM.

Compulsory payment of Interest

- The company is obligated to pay the debenture holder interest in priority irrespective of the condition of the company, whether it operates on profit or loss.

Security

- Debenture holders may be either secured or unsecured debentures.
- They can enforce the security by sale in case of default.
- Debentures can be secured against the assets of the companies. Even if the companies become insolvent, the debentures will be paid first to recover their investments.

Redemption

- A debenture is redeemed after a fixed period of time.
- Redemption of debentures implies by paying back of the sum to the debenture's holders against the issued debentures as mentioned in the company's prospectus on the completion of a fixed period of time.

Redemption

- A debenture is redeemed after a fixed period of time.
- The redemption of debentures refers to the payment of a money to debenture holders in exchange for the issued debentures as specified in the company's prospectus after a set length of time has passed.

No Voting Right

- Debenture's holders have no voting rights.
- Debenture's holders are the creditors of the company thus they have no right to make a vote on any internal matters of the company.
- They can only vote if their rights are being affected or the company ask them for opinions on certain circumstances.

Appointment of Trustee

- At the time of the issuing of debentures to the public to invite them to invest in the company, a deed is signed by the person appointed as trustee.
- The trustee is supposed to ensure that the borrowing firm fulfils its intentions.
- The trustee can apply for winding up of the company to safeguard the interest of the investors.

Convertibility

- Debenture's holders have the right to sue the company for any unpaid dues.
- Debentures are generally transferable.
- Debenture's holders have the option to convert the investment into equity shares.
- They can also sell them at any price on the stock and exchange markets.

1.5.2. Notes that there are a few differences between debentures and shares:

- ✓ Debenture must be repaid at some specified point in the future.
- ✓ Loan lenders do not gain voting rights in the company.
- ✓ Dividends are dependent on a profit, while interest is not.
- ✓ Dividends are dependent on the decisions of directors and shareholders while interest is not.
- ✓ Shares vary in value depending on the success of the company, where debentures have a fixed value.
- ✓ Companies may obtain tax relief on the interest but not on dividends.
- ✓ Debentures are most appropriate for short-term borrowing.
- ✓ Directors need little authority to increase capital through debentures.

Shares	Debentures
Can exercise their voting right.	Do not offer any voting rights.
Companies are not allowed to buy their shares.	There is no restriction for a company when it comes to buying its debentures.
Dividends are only offered to shareholders if such amount comes from distributable profits.	Fixed interest is paid to the debenture holder even if the company doesn't make any profit for that fiscal year.
In case of liquidation of a company, shareholders are the last ones on the list to get their capital back.	During the liquidation process, secured debentures are repaid before shareholders or creditors.
Shareholders have an interest in the Company.	The creditor or debenture holder of a company has a claim against that company.

Table 2: The differences between shares and debentures

1.5.3. There are two types of debentures

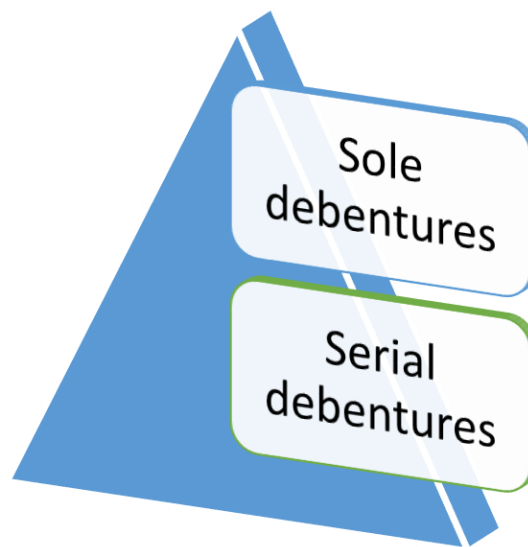


Figure 5: Types of debentures

1. Single / Sole debentures

- Documents that guarantee loans made by the company with the bank.
- Loans secured by a fixed or floating charge on the assets of the company.
- Conditions of loan repayment are made through a contract agreed by both parties.
- Automatic payments can be requested in the event of liquidation.

2. Public / Serial debentures

- Debentures issued to the public
- The company which issued debentures to the public shall appoint a trustee for the debenture holders.
- Trustee should make sure the company assets or the guarantor was sufficient to pay the corporate debt.
- A duty violation will cause the trustee to be liable under law.

1.6. CHARGES

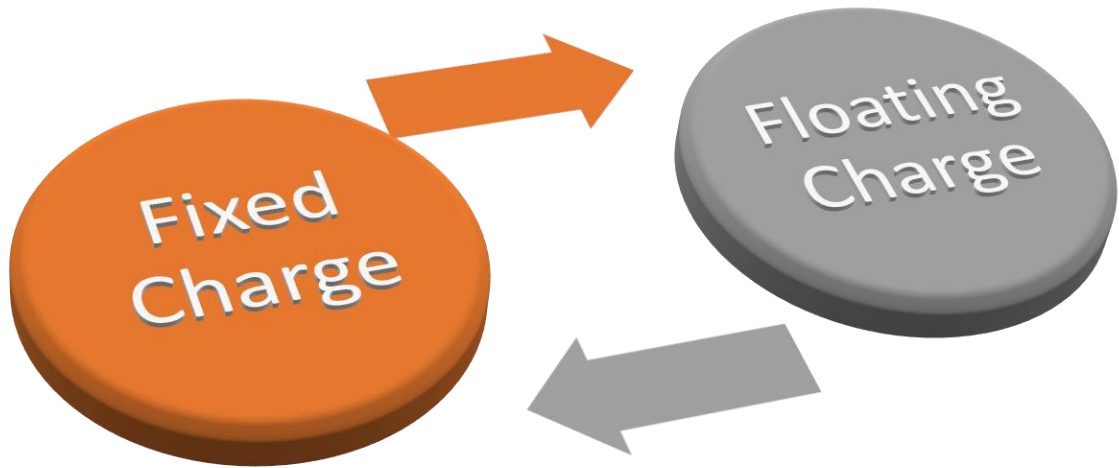


Figure 6: Types of Charges

1.6.1. Definition

- Charge/security refers to when a firm mortgages an asset, either expressly or implicitly, as a guarantee for a debt or loan it has committed.

1.6.2. Two types of charge:

1. Fixed charge

- a) A fixed charge, also sometimes called a specific charge is a property interest in specific property. It prevents the owner of the property from selling the property without permission. The security here is some specific, identifiable property and the property (normally an asset) is restricted in use. For example, if the loan is a mortgage, then the building may not be sublet.
- b) The restriction is generally on allowing companies to give third parties the right to use their assets since this will affect the lender's security.

- c) It is not sufficient for a debenture contract to merely state that the loan is secured over a fixed charge; the lender must enforce the restrictions placed down.
- d) A fixed charge is created by a deed or other charge documents, usually at the same time the loan is made or some credit facilities are put in place.
- e) Typically, the fixed charged holder has the right to take possession of the charged property, sell it and recover the secured sum and cost incurred.

2. Floating charge debenture

- a) For a debenture secured over a floating charge the charge is a class of assets which may vary over time. For example, a lender may secure his loan over aluminium stocks at a drinks can factory. Note that this can cause issues when looking at finished goods if stocks are low.
- b) If a company winding up, then its classes of assets “crystallize” that is they are frozen at a particular point and any debenture secured over that class of assets becomes a fixed charge debenture. On crystallisation, a floating charge becomes a fixed charge.
- c) Charges will crystallize when:
 - i. A company passes a voluntary winding-up order
 - ii. A court petitions for the company to be wound up
 - iii. The court appoints a receiver
 - iv. Creditors appoint a receiver
 - v. Interest payments on the debenture are missed

1.6.3. Registration of charges

Companies must keep a register of all charges on their property. In addition:

- a) Most charges must be registered with the registrar of companies. This does not apply to charges when the creditor is entitled to non-cash returns, such as the possession of goods.
- b) Any mortgages (that is, charge secured over property) must be registered with the Land Registry. This stops lots of building societies lending money secured on the same house.

1.6.4. Differences between Fixed Charges and Floating Charges

Item	Fixed Charges	Floating Charges
Meaning	Refer to a charge that can be ascertained with a specific asset while creating it	Refer to a charge that is created on the assets of a circulatory nature
Nature	static	Dynamic
Registration of charge	compulsory	Compulsory
Preference	First	Second
Dealing with asset	The company has no right to deal with property	The company can use /deal with asset
status	A legal charge	An equitable charge
Asset Type	First	Second

Table 3: The differences between Fixed Charge and Floating Charge

1.7. CONCLUSION

To conclude this topic, corporate equity is the basic principle that a student has to understand regarding a company. It comprises of the fundamental principles and the main structures of a company. Students have to be able to understand the principle and concept of each and every element of corporate equity. This is because all of the elements are the keys to understanding the whole concept of incorporation and corporation of a company.

1.8. SELF-REFLECTION

Question 1

Explain: -

- a. Authorized Capital.
- b. Issued Share Capital
- c. Unpaid Capital
- d. Paid-up Capital

Answer – Refer Para 1.2.2 – 1.2.5

Question 2

Draw a table for the differences between ordinary shares and preference shares.

Answer – Refer Table 1

Question 3

Ahmad wanted to buy shares from Juho Sdn. Bhd. He wanted a secured and low-risk investment. Suggest the best types of shares for by Ahmad.

Answer – Refer Para 1.3.1

Question 4

Define dividends

Answer – Refer Para 1.4

Question 5

Explain the differences between Interim Dividend and Final Dividend.

Answer – Refer Para 1.4.1

Question 6

Show the differences between Cumulative Dividends and Non-cumulative dividends.

Answer – Refer Para 1.4.1

Question 7

Write the principles of *Salomon v. Salomon & Co* and relate it with debentures.

Answer – Refer Para 1.5

Question 8

Explain FIVE (5) features of debentures

Answer – Refer Para 1.5.1

Question 9

Draw the differences between debentures and shares in a table.

Answer – Table 2

Question 10

Explain:

- a. Sole debentures; and
- b. Serial debentures

Answer – Refer Para 1.5.3

Question 11

Kita Ria Sdn Bhd is having financial difficulties and has decided to sell its assets. Explain the conditions that it has to follow in order to sell its fixed-charge assets and floating-charge assets.

Answer – Refer Para 1.6.2

Question 12

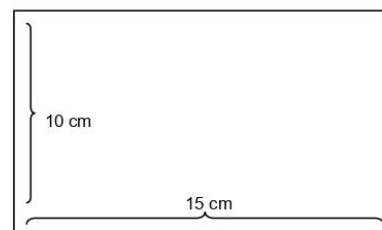
Draw the differences between fixed charge and floating charge in a table.

Answer – Refer Table 3

1.9 APPENDIX

Company No.

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COMPANIES ACT 2016

Section 95

NOTIFICATION OF VARIATION OF CLASS RIGHTS

_____(Company Name)

To the Registrar of Companies,

..... (Nama Syarikat and Co. Registration No.) hereby gives notice that the rights of class of are varied in accordance with the resolution dated or the Court Order dated

The variation of class rights of had taken effect on (date)

The resolution[∞] / Court Order is attached.

Declaration:

I confirm that the facts and information stated in this document are true and to the best of my knowledge.

Signed:

(Secretary)

Name :
License no/ Membership No. :
SSM Practicing Certificate No. :
Date :

[∞] Not applicable if the copy of the resolution or other documents are required to be lodge with the Registrar under other provisions of the Act.

Attention:

It is an offence under section 591 of the Companies Act 2016 to make or authorize the making of a statement that a person knows is false or misleading and that person may be liable, upon conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding RM3million or to both.

LODGER INFORMATION

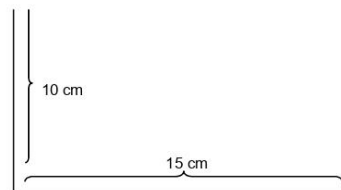
Name :
NRIC No :
Address :
Phone No :
Email :

Appendix 1: Variation of Class Rights

This form is used by the company to notify the Registrar of Companies (SSM) regarding the variation of class rights issued by a company.

Company No.

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COMPANIES ACT 2016

Section 72

NOTICE OF REDEMPTION OF PREFERENCE SHARES

_____ (Company Name)

To the Registrar of Companies,

_____ (Name and Co. Registration No.) hereby gives notice that on the _____ day of _____, 20____,

* _____ redeemable preference shares, pursuant to a resolution passed on the _____ day of _____, 20____, were -

(Please tick where applicable)

redeemed out of profits and the amount of RM _____ has been transferred to the share capital;

redeemed out of the proceeds of a fresh issue of shares;

redeemed out of capital of the company; or

redeemed and converted to fresh issue of shares comprising of * _____ ^ordinary shares.

The preference shares redeemed were the shares comprised in share certificate(s) numbered ** _____ to _____

All the directors have made a solvency statement dated _____ under section 113 of Companies Act 2016 in relation to redemption of shares out of capital and the copy of the solvency statement has been lodged with the Registrar on _____

Declaration:

I confirm that the facts and information stated in this document are true and to the best of my knowledge.

Signed:

(Secretary)

Name : _____
License no/ Membership No. : _____
SSM Practicing Certificate No. : _____
Date : _____

Attention:

It is an offence under section 591 of the Companies Act 2016 to make or authorize the making of a statement that a person knows is false or misleading and that person may be liable, upon conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding RM3million or to both.

LODGER INFORMATION

Name : _____
NRIC No : _____
Address : _____
Phone No : _____
Email : _____

* - insert number of shares

** - only if information is available.

- strike out whichever is not applicable

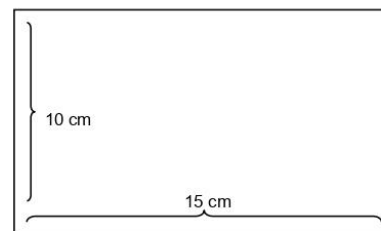
^ - please state type of shares if it is not ordinary shares

Appendix 2: Redemption of Shares

This form is used by the company to notify the Registrar of Companies (SSM) regarding the redemption of preferences shares for preference shareholders.

Company No.

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COMPANIES ACT 2016

Section 60(2)

_____(Company Name)

NOTIFICATION OF ISSUANCE OF DEBENTURES

Date of issuance of debentures

:

Details of debentures

Name of debenture holders:

Amount:

Declaration:

I confirm that the facts and information stated in this document are true and to the best of my knowledge.

Signed:

(Secretary)

Name

:

License no/ Membership No.

:

SSM Practicing Certificate No.

:

Date

:

Attention:

It is an offence under section 591 of the Companies Act 2016 to make or authorize the making of a statement that a person knows is false or misleading and that person may be liable, upon conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding RM3million or to both.

LODGER INFORMATION

Name

:

NRIC No

:

Address

:

Phone No

:

Email

:

Appendix 3: Issuance of Debentures

This form is used by the company to notify the Registrar of Companies (SSM) regarding the issuance of debentures.

1.10 REFERENCES

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