Companies Act 1989

1989 CHAPTER 40

PART IV

REGISTRATION OF COMPANY CHARGES

Supplementary provisions

102 Power to make further provision by regulations

The following section is inserted in Part XII of the Companies Act 1985—

"Supplementary provisions

413 Power to make further provision by regulations

(1) The Secretary of State may by regulations make further provision as to the application of the provisions of this Part in relation to charges of any description specified in the regulations.

Nothing in the following provisions shall be construed as restricting the generality of that power.

(2) The regulations may require that where the charge is contained in or evidenced or varied by a written instrument there shall be delivered to the registrar for registration, instead of particulars or further particulars of the charge, the instrument itself or a certified copy of it together with such particulars as may be prescribed.

(3) The regulations may provide that a memorandum of a charge ceasing to affect property of the company shall not be accepted by the registrar unless supported by such evidence as may be prescribed, and that a memorandum not so supported shall be treated as not having been delivered.

(4) The regulations may also provide that where the instrument creating the charge is delivered to the registrar in support of such a memorandum, the registrar may mark the instrument as cancelled before returning it and shall send copies of the instrument cancelled to such persons as may be prescribed.

(5) The regulations may exclude or modify, in such circumstances and to such extent as may be prescribed, the operation of the provisions of this Part relating to the voidness of a charge.

(6) The regulations may require, in connection with the delivery of particulars, further particulars or a memorandum of the charge's ceasing to affect property of the company, the delivery of such supplementary information as may be prescribed, and may—

(a) apply in relation to such supplementary information any provisions of this Part relating to particulars, further particulars or such a memorandum, and

(b) provide that the particulars, further particulars or memorandum shall be treated as not having been delivered until the required supplementary information is delivered.

(7) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.".

103 Other supplementary provisions

The following sections are inserted in Part XII of the Companies Act 1985—

"**414 Date of creation of charge**

(1) References in this Part to the date of creation of a charge by a company shall be construed as follows.

(2) A charge created under the law of England and Wales shall be taken to be created—

(a) in the case of a charge created by an instrument in writing, when the instrument is executed by the company or, if its execution by the company is conditional, upon the conditions being fulfilled, and

(b) in any other case, when an enforceable agreement is entered into by the company conferring a security interest intended to take effect forthwith or upon the company acquiring an interest in property subject to the charge.

(3) A charge created under the law of Scotland shall be taken to be created—

(a) in the case of a floating charge, when the instrument creating the floating charge is executed by the company, and

(b) in any other case, when the right of the person entitled to the benefit of the charge is constituted as a real right.

(4) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, any further proceedings necessary to make the charge valid or effectual under the law of the country where the property is

situated shall be disregarded in ascertaining the date on which the charge is to be taken to be created.

415 Prescribed particulars and related expressions

(1) References in this Part to the prescribed particulars of a charge are to such particulars of, or relating to, the charge as may be prescribed.

(2) The prescribed particulars may, without prejudice to the generality of subsection (1), include—

(a) whether the company has undertaken not to create other charges ranking in priority to or *pari passu* with the charge, and

(b) whether the charge is a market charge within the meaning of Part VII of the Companies Act 1989 or a charge to which the provisions of that Part apply as they apply to a market charge.

(3) References in this Part to the registered particulars of a charge at any time are to such particulars and further particulars of the charge as have at that time been duly delivered for registration.

(4) References in this Part to the registered particulars of a charge being complete and accurate at any time are to their including all the prescribed particulars which would be required to be delivered if the charge were then newly created.

416 Notice of matters disclosed on register

(1) A person taking a charge over a company's property shall be taken to have notice of any matter requiring registration and disclosed on the register at the time the charge is created.

(2) Otherwise, a person shall not be taken to have notice of any matter by reason of its being disclosed on the register or by reason of his having failed to search the register in the course of making such inquiries as ought reasonably to be made.

(3) The above provisions have effect subject to any other statutory provision as to whether a person is to be taken to have notice of any matter disclosed on the register.

417 Power of court to dispense with signature

(1) Where it is proposed to deliver further particulars of a charge, or to deliver a memorandum of a charge ceasing to affect the company's property, and—

(a) the chargee refuses to sign or authorise a person to sign on his behalf, or cannot be found, or

(b) the company refuses to authorise a person to sign on its behalf,

the court may on the application of the company or the chargee, or of any other person having a sufficient interest in the matter, authorise the delivery of the particulars or memorandum without that signature.

(2) The order may be made on such terms as appear to the court to be appropriate.

(3) Where particulars or a memorandum are delivered to the registrar for registration in reliance on an order under this section, they must be accompanied by an office copy of the order.

In such a case the references in sections 401 and 403 to the particulars or memorandum being duly signed are to their being otherwise duly signed.

(4) The registrar shall file the office copy of the court order along with the particulars or memorandum.”.

104 Interpretation, &c

The following sections are inserted in Part XII of the Companies Act 1985—

“418 Regulations

Regulations under any provision of this Part, or prescribing anything for the purposes of any such provision—

(a) may make different provision for different cases, and

(b) may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be appropriate.

419 Minor definitions

(1) In this Part—

“chargee” means the person for the time being entitled to exercise the security rights conferred by the charge;

“issue of debentures” means a group of debentures, or an amount of debenture stock, secured by the same charge; and

“series of debentures” means a group of debentures each containing or giving by reference to another instrument a charge to the benefit of which the holders of debentures of the series are entitled *pari passu*.

(2) References in this Part to the creation of a charge include the variation of a charge which is not registrable so as to include property by virtue of which it becomes registrable.

The provisions of section 414 (construction of references to date of creation of charge) apply in such a case with any necessary modifications.

(3) References in this Part to the date of acquisition of property by a company are—

(a) in England and Wales, to the date on which the acquisition is completed, and

(b) in Scotland, to the date on which the transaction is settled.

(4) In the application of this Part to a floating charge created under the law of Scotland, references to crystallisation shall be construed as references to the attachment of the charge.

(5) References in this Part to the beginning of insolvency proceedings are to—

(a) the presentation of a petition on which an administration order or winding-up order is made, or

(b) the passing of a resolution for voluntary winding up.

420 Index of defined expressions

The following Table shows the provisions of this Part defining or otherwise explaining expressions used in this Part (other than expressions used only in the same section)—

charge	sections 395(2) and 396(6)
charge requiring registration	section 396
chargee	section 419(1)
complete and accurate (in relation to registered particulars)	section 415(4)
creation of charge	section 419(2)
crystallisation (in relation to Scottish floating charge)	section 419(4)
date of acquisition (of property by a company)	section 419(3)
date of creation of charge	section 414
further particulars	section 401
insolvency proceedings, beginning of	section 419(5)
issue of debentures	section 419(1)
memorandum of charge ceasing to affect company's property	section 403
prescribed particulars	section 415(1) and (2)
property	section 395(2)
registered particulars	section 415(3)
registrar and registration in relation to a charge	section 395(4)
relevant event	section 399(2)
series of debentures	section 419(1)."

105 Charges on property of oversea company

The provisions set out in Schedule 15 are inserted in Part XXIII of the Companies Act 1985 (oversea companies), as a Chapter III (registration of charges).

106 Application of provisions to unregistered companies

In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), at the appropriate place insert—

"Part XII	Registration of company charges; copies of	Subject to section 718(3).".

	instruments and register to be kept by company.

107 Consequential amendments

The enactments specified in Schedule 16 have effect with the amendments specified there, which are consequential on the amendments made by the preceding provisions of this Part.