



# Companies Act 1985

## 1985 CHAPTER 6

### PART XII

#### REGISTRATION OF CHARGES

#### CHAPTER II

##### REGISTRATION OF CHARGES (SCOTLAND)

#### **410 Charges void unless registered**

- (1) The following provisions of this Chapter have effect for the purpose of securing the registration in Scotland of charges created by companies.
- (2) Every charge created by a company, being a charge to which this section applies, is, so far as any security on the company's property or any part of it is conferred by the charge, void against the liquidator and any creditor of the company unless the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in the manner required by this Chapter within 21 days after the date of the creation of the charge.
- (3) Subsection (2) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section the money secured by it immediately becomes payable.
- (4) This section applies to the following charges—
  - (a) a charge on land wherever situated, or any interest in such land (not including a charge for any rent, ground annual or other periodical sum payable in respect of the land, but including a charge created by a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970),
  - (b) a security over the uncalled share capital of the company,

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- (c) a security over incorporeal moveable property of any of the following categories—
    - (i) the book debts of the company,
    - (ii) calls made but not paid,
    - (iii) goodwill,
    - (iv) a patent or a licence under a patent,
    - (v) a trademark,
    - (vi) a copyright or a licence under a copyright,
  - (d) a security over a ship or aircraft or any share in a ship, and
  - (e) a floating charge.
- (5) In this Chapter " company" (except in section 424) means an incorporated company registered in Scotland; " registrar of companies" means the registrar or other officer performing under this Act the duty of registration of companies in Scotland ; and references to the date of creation of a charge are—
- (a) in the case of a floating charge, the date on which the instrument creating the floating charge was executed by the company creating the charge, and
  - (b) in any other case, the date on which the right of the person entitled to the benefit of the charge was constituted as a real right.

#### **411 Charges on property outside United Kingdom**

- (1) In the case of a charge created out of the United Kingdom comprising property situated outside the United Kingdom, the period of 21 days after the date on which the copy of the instrument creating it could (in due course of post, and if despatched with due diligence) have been received in the United Kingdom is substituted for the period of 21 days after the date of the creation of the charge as the time within which, under section 410(2), the particulars and copy are to be delivered to the registrar.
- (2) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the copy of the instrument creating or purporting to create the charge may be sent for registration under section 410 notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

#### **412 Negotiable instrument to secure book debts**

Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company is not, for purposes of section 410, to be treated as a charge on those book debts.

#### **413 Charges associated with debentures**

- (1) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 410, deemed to be an interest in land.
- (2) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu*, is created by a company, it is sufficient for purposes of section 410 if there are delivered to or received by the registrar of companies within 21 days after

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the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars in the prescribed form—

- (a) the total amount secured by the whole series,
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined.
- (c) a general description of the property charged.
- (d) the names of the trustees (if any) for the debenture holders, and
- (e) in the case of a floating charge, a statement of any provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the power of the company to grant further securities ranking in priority to, or *pari passu* with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities. together with a copy of the deed containing the charge or, if there is no such deed, of one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar of companies for entry in the register particulars (in the prescribed form) of the date and amount of each issue of debentures of the series, but any omission to do this does not affect the validity of any of those debentures.

- (3) Where any commission, allowance or discount has been paid or made, either directly or indirectly, by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any such debentures, the particulars required to be sent for registration under section 410 include particulars as to the amount or rate per cent, of the commission, discount or allowance so paid or made; but any omission to do this does not affect the validity of the debentures issued.

The deposit of any debentures as security for any debt of the company is not, for purposes of this subsection, treated as the issue of the debentures at a discount.

#### **414 Charge by way of ex facie absolute disposition, etc.**

- (1) For the avoidance of doubt, it is hereby declared that, in the case of a charge created by way of an *ex facie* absolute disposition or assignation qualified by a back letter or other agreement, or by a standard security qualified by an agreement, compliance with section 410(2) does not of itself render the charge unavailable as security for indebtedness incurred after the date of compliance.
- (2) Where the amount secured by a charge so created is purported to be increased by a further back letter or agreement, a further charge is held to have been created by the *ex facie* absolute disposition or assignation or (as the case may be) by the standard security, as qualified by the further back letter or agreement; and the provisions of this Chapter apply to the further charge as if—
  - (a) references in this Chapter (other than in this section) to the charge were references to the further charge, and
  - (b) references to the date of the creation of the charge were references to the date on which the further back letter or agreement was executed.

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#### **415 Company's duty to register charges created by it**

- (1) It is a company's duty to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under sections 410 to 414; but registration of any such charge may be effected on the application of any person interested in it.
- (2) Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.
- (3) If a company makes default in sending to the registrar for registration the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as above mentioned, then, unless the registration has been effected on the application of some other person, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### **416 Duty to register charges existing on property acquired**

- (1) Where a company acquires any property which is subject to a charge of any kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Chapter, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument 'if any) by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in the manner required by this Chapter within 21 days after the date on which the transaction was settled.
- (2) If, however, the property is situated and the charge was created outside Great Britain, 21 days after the date on which the copy of the instrument could (in due course of post, and if despatched with due diligence) have been received in the United Kingdom are substituted for 21 days after the settlement of the transaction as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.
- (3) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### **417 Register of charges to be kept by registrar of companies**

- (1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Chapter, and shall enter in The register with respect to such charges the particulars specified below.
- (2) In the case of a charge to the benefit of which the holders of a series of debentures are entitled, there shall be entered in the register the particulars specified in section 413(2).
- (3) In the case of any other charge, there shall be entered—
  - (a) if it is a charge created by the company, the date of its creation, and if it was a charge existing on property acquired by the company, the date of the acquisition of the property,
  - (b) the amount secured by the charge,
  - (c) short particulars of the property charged,
  - (d) the persons entitled to the charge, and

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- (e) in the case of a floating charge, a statement of any of the provisions of the charge and of any instrument relating to it which prohibit or restrict or regulate the company's power to grant further securities ranking in priority to, or pari passu with, the floating charge, or which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities.
- (4) The register kept in pursuance of this section shall be open to inspection by any person.

#### **418 Certificate of registration to be issued**

- (1) The registrar of companies shall give a certificate of the registration of any charge registered in pursuance of this Chapter.
- (2) The certificate—
- (a) shall be either signed by the registrar, or authenticated by his official seal,
  - (b) shall state the name of the company and the person first-named in the charge among those entitled to the benefit of the charge (or, in the case of a series of debentures, the name of the holder of the first such debenture to be issued) and the amount secured by the charge, and
  - (c) is conclusive evidence that the requirements of this Chapter as to registration have been complied with.

#### **419 Entries of satisfaction and relief**

- (1) The registrar of companies, on application being made to him in the prescribed form, and on receipt of a statutory declaration in the prescribed form verifying, with respect to any registered charge,—
- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or
  - (b) that part of the property charged has been released from the charge or has ceased to form part of the company's property,
- may enter on the register a memorandum of satisfaction (in whole or in part) regarding that fact.
- (2) Where the registrar enters a memorandum of satisfaction in whole, he shall, if required, furnish the company with a copy of the memorandum.
- (3) Without prejudice to the registrar's duty under this section to require to be satisfied as above mentioned, he shall not be so satisfied unless—
- (a) the creditor entitled to the benefit of the floating charge, or a person authorised to do so on his behalf, certifies as correct the particulars submitted to the registrar with respect to the entry on the register of a memorandum under this section, or
  - (b) the court, on being satisfied that such certification cannot readily be obtained, directs him accordingly.
- (4) Nothing in this section requires the company to submit particulars with respect to the entry in the register of a memorandum of satisfaction where the company, having created a floating charge over all or any part of its property, disposes of part of the property subject to the floating charge.
- (5) A memorandum or certification required for the purposes of this section shall be in such form as may be prescribed.

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#### **420 Rectification of register**

The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that it is on other grounds just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended or (as the case may be) that the omission or mis-statement shall be rectified.

#### **421 Copies of instruments creating charges to be kept by company**

- (1) Every company shall cause a copy of every instrument creating a charge requiring registration under this Chapter to be kept at the company's registered office.
- (2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

#### **422 Company's register of charges**

- (1) Every company shall keep at its registered office a register of charges and enter in it all charges specifically affecting property of the company, and all floating charges on any property of the company.
- (2) There shall be given in each case a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled to it.
- (3) If an officer of the company knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section, he is liable to a fine.

#### **423 Right to inspect copies of instruments, and company's register**

- (1) The copies of instruments creating charges requiring registration under this Chapter with the registrar of companies, and the register of charges kept in pursuance of section 422, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) to the inspection of any creditor or member of the company without fee.
- (2) The register of charges shall be open to the inspection of any other person on payment of such fee, not exceeding 5 pence for each inspection, as the company may prescribe.
- (3) If inspection of the copies or register is refused, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (4) If such a refusal occurs in relation to a company, the court may by order compel an immediate inspection of the copies or register.

#### **424 Extension of Chapter II**

- (1) This Chapter extends to charges on property in Scotland which are created, and to charges on property in Scotland which is acquired, by a company incorporated outside Great Britain which has a place of business in Scotland.
- (2) In relation to such a company, sections 421 and 422 apply with the substitution, for the reference to the company's registered office, of a reference to its principal place of business in Scotland.