
STATUTORY INSTRUMENTS

2009 No. 1917

**The Overseas Companies (Execution of Documents
and Registration of Charges) Regulations 2009**

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009.

(2) These Regulations come into force on 1st October 2009.

Interpretation

2. In these Regulations—

“certified copy” means a copy certified as a correct copy;

“establishment” means—

(a) a branch within the meaning of the Eleventh Company Law Directive (89/666/EEC)(1),
or

(b) a place of business that is not such a branch, and

“UK establishment” means an establishment in the United Kingdom.

PART 2

EXECUTION OF DOCUMENTS ETC

Application of Part

3. This Part applies to all overseas companies.

Formalities of doing business under the law of England and Wales and Northern Ireland

4. Sections 43, 44 and 46 of the Companies Act 2006 apply to overseas companies, modified so that they read as follows—

“Company contracts

43.—(1) Under the law of England and Wales or Northern Ireland a contract may be made—

- (a) by an overseas company, by writing under its common seal or in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a company, and
 - (b) on behalf of an overseas company, by any person who, in accordance with the laws of the territory in which the company is incorporated, is acting under the authority (express or implied) of that company.
- (2) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of an overseas company.

Execution of documents

44.—(1) Under the law of England and Wales or Northern Ireland a document is executed by an overseas company—

- (a) by the affixing of its common seal, or
 - (b) if it is executed in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a company.
- (2) A document which—
- (a) is signed by a person who, in accordance with the laws of the territory in which an overseas company is incorporated, is acting under the authority (express or implied) of the company, and
 - (b) is expressed (in whatever form of words) to be executed by the company,

has the same effect in relation to that company as it would have in relation to a company incorporated in England and Wales or Northern Ireland if executed under the common seal of a company so incorporated.

(3) In favour of a purchaser a document is deemed to have been duly executed by an overseas company if it purports to be signed in accordance with subsection (2).

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

(4) Where a document is to be signed by a person on behalf of more than one overseas company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.

(5) References in this section to a document being (or purporting to be) signed by a person who, in accordance with the laws of the territory in which an overseas company is incorporated, is acting under the authority (express or implied) of the company are to be read, in a case where that person is a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.

(6) This section applies to a document that is (or purports to be) executed by an overseas company in the name of or on behalf of another person whether or not that person is also an overseas company.

Execution of deeds

46.—(1) A document is validly executed by an overseas company as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989 (c.34) and for the purposes of the law of Northern Ireland if, and only if—

- (a) it is duly executed by the company, and

(b) it is delivered as a deed.

(2) For the purposes of subsection (1)(b) a document is presumed to be delivered upon its being executed, unless a contrary intention is proved.”.

Formalities of doing business under the law of Scotland

5. Section 48 of the Companies Act 2006 applies to overseas companies, modified so that it reads as follows—

“Execution of documents by overseas companies

48.—(1) The following provision forms part of the law of Scotland only.

(2) For the purposes of any enactment—

(a) providing for a document to be executed by a company by affixing its common seal, or

(b) referring (in whatever terms) to a document so executed,

a document signed or subscribed by or on behalf of an overseas company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 (c.7) has effect as if so executed.”.

Other matters

6. Section 51 of the Companies Act 2006 applies to overseas companies, modified so that it reads as follows—

“Pre-incorporation contracts, deeds and obligations

51.—(1) A contract that purports to be made by or on behalf of an overseas company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

(2) Subsection (1) applies—

(a) to the making of a deed under the law of England and Wales or Northern Ireland, and

(b) to the undertaking of an obligation under the law of Scotland,

as it applies to the making of a contract.”.

Revocation

7. The Foreign Companies (Execution of Documents) Regulations 1994(2) and the Foreign Companies (Execution of Documents) Regulations (Northern Ireland) 2003(3) are revoked.

(2) S.I. 1994/950.

(3) S.R. (NI) 2003 No 5.

PART 3

REGISTRATION OF CHARGES

Introduction

Application and interpretation of Part

- 8.**—(1) This Part applies to an overseas company that is registered (as defined below).
- (2) For the purposes of this Part—
- (a) an overseas company becomes registered when it complies with Part 2 (initial registration of particulars) of the Overseas Companies Regulations 2009⁽⁴⁾ in respect of one or more UK establishments and those particulars are registered, and
 - (b) an overseas company ceases to be registered when it gives notice under regulation 77 (notice of closure of UK establishment) of those regulations in respect of all its UK establishments and that notice is registered.
- (3) For the purposes of this Part the particulars and notice referred to in paragraph (2) are not treated as registered unless and until they are on the register and accordingly available for public inspection.
- (4) In this Part “charge”—
- (a) in England and Wales and Northern Ireland, includes a mortgage;
 - (b) in Scotland, includes any right in security.
- (5) In relation to a charge created under the law of Scotland, references in this Part to the date of creation of the charge are to—
- (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;
 - (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.

Charges requiring registration

Charges requiring registration

- 9.**—(1) A charge requires registration under this Part if—
- (a) it is created by a company to which this Part applies,
 - (b) the property subject to the charge is situated in the United Kingdom, and
 - (c) the charge is of a type requiring registration.
- (2) Whether the conditions in paragraph (1)(a) and (b) are met is determined when the charge is created.
- (3) The types of charge requiring registration are—
- (a) a charge on land or any interest in land, other than a charge for rent or any other periodical sum issuing out of (in Scotland, payable in respect of) land;
 - (b) a charge created or evidenced by an instrument that, if executed by an individual, would require registration as a bill of sale;

(4) [S.I. 2009/1801](#).

- (c) a charge for the purposes of securing any issue of debentures;
 - (d) a charge on uncalled share capital of the company;
 - (e) a charge on calls made but not paid;
 - (f) a charge on book debts of the company;
 - (g) a floating charge on the company's property or undertaking;
 - (h) a charge on a ship or aircraft, or any share in a ship;
 - (i) a charge on goodwill or on any intellectual property.
- (4) For the purposes of paragraph (3)(a)—
- (a) a charge on land includes a charge created by a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970(5); and
 - (b) the holding of debentures entitling the holder to a charge on land is not an interest in the land.
- (5) For the purposes of paragraph (3)(f) the deposit by way of security of a negotiable instrument given to secure the payment of book debts is not a charge on those book debts.
- (6) For the purposes of paragraph (3)(i), “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright or design right; or
 - (b) any licence under or in respect of any such right.

Duty to deliver particulars of charge etc for registration

10.—(1) A company to which this Part applies that creates a charge requiring registration must deliver the required particulars of the charge, together with a certified copy of the instrument (if any) by which the charge is created or evidenced, to the registrar before the end of the period allowed for registration.

(2) Registration of the charge may instead be effected on the application of a person interested in it.

(3) 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 registration.

(4) Paragraph (1) does not apply if the property subject to the charge is, at the end of the period allowed for registration, no longer situated in the United Kingdom.

The required particulars

11.—(1) The required particulars are—

- (a) the date of the creation of the charge,
- (b) a description of the instrument (if any) creating or evidencing the charge,
- (c) the amount secured by the charge,
- (d) the name and address of the person entitled to the charge, and
- (e) short particulars of the property charged.

(2) In the case of a floating charge created under the law of Scotland, the required particulars include a statement as to any provisions of the charge and of any instrument relating to it—

- (a) 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

(5) 1970 c.35.

- (b) which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities.

The period allowed for registration

- 12.** The period allowed for registration of the charge is—
- (a) 21 days, beginning with the day after the day on which the charge is created, or
 - (b) if the charge is created outside the United Kingdom, 21 days beginning with the day after the day on which the instrument by which the charge is created or evidenced (or a copy of it) could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.

Charge by way of *ex facie* absolute disposition

13.—(1) For the avoidance of doubt, it is hereby declared that, in the case of a charge created under the law of Scotland 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 regulation 10(1) 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.

- (3) In that case, the provisions of this Part apply to the further charge as if—
- (a) references in this Part (other than in this regulation) to a charge were references to the further charge, and
 - (b) references to the date of creation of a charge were references to the date on which the further back letter or agreement was executed.

Special rules for debentures

Special rules about debentures: charge in series of debentures

14.—(1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which debenture holders of that series are entitled *pari passu* is created by a company, it is for the purposes of regulation 10 sufficient if the following particulars, together with a certified copy of the instrument containing the charge (or, if there is no such instrument, a certified copy of one of the debentures of the series), are delivered to the registrar before the end of the period allowed for registration.

- (2) The required particulars are—
- (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 instrument (if any) by which the series is created or defined,
 - (c) a general description of the property charged, and
 - (d) the names of the trustees (if any) for the debenture holders.

(3) In the case of a floating charge created under the law of Scotland, the required particulars include a statement as to any provisions of the charge and of any instrument relating to it—

- (a) 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
- (b) which vary or otherwise regulate the order of ranking of the floating charge in relation to subsisting securities.

(4) Where more than one issue is made of debentures in the series, particulars of the date and amount of each issue of debentures of the series must be sent to the registrar for entry in the register of charges.

Special rules about debentures: additional registration requirement for commission etc

15.—(1) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to a person in consideration of their—

- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures in a company, or
- (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures,

the particulars required to be sent for registration under regulation 10 include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made.

(2) The deposit of debentures as security for a debt of the company is not, for the purposes of this regulation, treated as the issue of debentures at a discount.

Special rules about debentures: period allowed for registration

16. The period allowed for registration of particulars of a series of debentures as a result of regulation 14 is—

- (a) if there is an instrument containing the charge mentioned in paragraph (1) of that regulation, 21 days beginning with the day after the date on which that instrument is executed;
- (b) if there is no such instrument, 21 days beginning with the day after the day on which the first debenture of the series is executed.

Special rules about debentures: endorsement of certificate on debentures

17.—(1) The company shall cause a copy of every certificate of registration given under regulation 18(4) to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered.

(2) This does not require a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(3) A person commits an offence who knowingly and wilfully authorises or permits the delivery of a debenture or certificate of debenture stock which under this regulation is required to have endorsed on it a copy of a certificate of registration, without the copy being so endorsed upon it.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

The register of charges

The register of charges

18.—(1) The registrar shall keep for each company to which this Part applies a register of all the charges requiring registration under this Part.

(2) The registrar shall enter in the register the particulars required to be delivered to the registrar under this Part.

(3) In the case of a charge imposed by the Enforcement of Judgments Office under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981⁽⁶⁾, the registrar shall enter in the register the date on which the charge became effective.

(4) The registrar shall give a certificate of the registration of any charge registered in pursuance of this Part, stating the name of the company and the amount secured by the charge

(5) The certificate—

- (a) shall be signed by the registrar or authenticated by the registrar's official seal, and
- (b) is conclusive evidence that the requirements of this Part as to registration have been satisfied.

(6) The register kept in pursuance of this regulation shall be open to inspection by any person.

Consequences of failure to register

19.—(1) If a company creates a charge requiring registration under this Part, the charge is void (so far as any security on the company's property or undertaking is conferred by it) against—

- (a) a liquidator of the company,
- (b) an administrator of the company, and
- (c) a creditor of the company,

if regulation 10 (duty to deliver particulars of charge etc for registration) is not complied with.

(2) Failure to comply with—

- (a) regulation 14(4) (special rules for debentures: duty to send particulars of each issue of debentures), or
- (b) regulation 15 (special rules for debentures: additional registration requirement for commission etc),

does not affect the validity of the debentures issued.

(3) Paragraph (1) 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 regulation, the money secured by it immediately becomes payable.

Registration of enforcement of security

20.—(1) A person who—

- (a) obtains an order for the appointment of a receiver or manager of property of a company to which this Part applies, or
- (b) appoints such a receiver or manager under powers contained in an instrument,

must give notice of the fact to the registrar within seven days of the order or of the appointment under those powers.

(6) [S.I. 1981/226 \(N.I.6\)](#).

(2) A person appointed receiver or manager of a company's property under powers contained in an instrument who ceases to act as such receiver or manager must, on so ceasing, give the registrar notice to that effect.

(3) The registrar must enter a fact of which notice is given under this regulation in the register of charges.

(4) A person who makes default in complying with the requirements of paragraph (1) or (2) commits an offence.

(5) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(6) This regulation does not apply in relation to the appointment of a receiver under section 51(1) or (2) of the Insolvency Act 1986(7) (appointment under law of Scotland by holder of floating charge or by court on application of holder), as respects which section 53(1) or 54(3) of that Act requires the delivery to the registrar of a copy of the instrument or interlocutor making the appointment.

Entries of satisfaction and release

21.—(1) This regulation applies if a statement is delivered to the registrar verifying with respect to a 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 or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking.

(2) If the charge is a floating charge created under the law of Scotland, the statement must be accompanied by either—

- (a) a statement by the creditor entitled to the benefit of the charge, or a person authorised by the creditor for that purpose, verifying that the statement mentioned in paragraph (1) is correct, or
- (b) a direction obtained from the court, on the ground that the statement by the creditor mentioned in sub-paragraph (a) could not be readily obtained, dispensing with the need for that statement.

(3) The registrar may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking (as the case may be).

(4) Where the registrar enters a memorandum of satisfaction in whole, the registrar must if required send the company a copy of it.

(5) Nothing in this regulation 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 under the law of Scotland over all or any part of its property, disposes of part of the property subject to the floating charge.

Rectification of register of charges

22. If the court is satisfied—

- (a) that the failure to register a charge before the end of the period allowed for registration, or the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction—
 - (i) was accidental or due to inadvertence or to some other sufficient cause, or

(7) 1986 c.45.

(ii) is not of a nature to prejudice the position of creditors or shareholders of the company,
or

(b) that on other grounds it is just and equitable to grant relief,

the court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the period allowed for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

Companies' records and register

Companies to keep available for inspection copies of instruments creating charges

23.—(1) A company to which this Part applies must keep available for inspection a copy of every instrument creating a charge requiring registration under this Part.

(2) In the case of a series of uniform debentures, a copy of one of the debentures of the series is sufficient.

Company's register of charges

24.—(1) Every company to which this Part applies must keep available for inspection a register of charges and must enter in it—

- (a) all charges specifically affecting property of the company situated in the United Kingdom, and
- (b) all floating charges on the whole or part of the company's property or undertaking situated in the United Kingdom.

(2) The entry must in each case give a short description of the property charged, the amount of the charge and, except in the cases of securities to bearer, the names of the persons entitled to it.

(3) An officer of the company who knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this regulation commits an offence.

(4) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

Copies of instruments and company's register of charges to be available for inspection

25.—(1) This regulation applies to—

- (a) documents required to be kept available for inspection under regulation 23 (copies of instruments creating charges), and
- (b) a company's register of charges kept in pursuance of regulation 24.

(2) The documents and register must be kept available for inspection at a location in the United Kingdom at which the company carries on business notified to the registrar in accordance with paragraph (3).

(3) The company must give notice to the registrar—

- (a) of the place at which the documents and register are kept available for inspection, within 14 days of the first registration of a charge under this Part, and
- (b) of any change in that place, within 14 days of any such change.

(4) The documents and register shall be open to the inspection—

- (a) of any creditor or member of the company without charge, and
 - (b) of any other person on payment of £3.50 for each hour or part of an hour during which the right of inspection is exercised.
- (5) If default is made in complying with paragraph (3) or an inspection required under paragraph (4) is refused, an offence is committed by—
- (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) If an inspection required under paragraph (4) is refused the court may by order compel an immediate inspection.

Exercise of right of inspection

26.—(1) A company to which this Part applies shall make the documents and register referred to in regulation 25 available for inspection by a person on a day which has been specified by that person (“the specified day”) provided that—

- (a) the specified day is a working day; and
 - (b) that person gives the company the required notice of the specified day.
- (2) The required notice is at least 10 working days’ notice of the specified day.
- (3) When a person gives notice of the specified day he shall also give notice of the time on that day at which he wishes to start the inspection (which shall be any time between 9 am and 3 pm) and the company shall make its company records available for inspection by that person for a period of at least 2 hours beginning with that time.
- (4) A company that fails to comply with this regulation is treated as having refused inspection.

Supplementary provisions

Delivery of documents in language other than English

27.—(1) The following documents are specified for the purposes of section 1105(2)(d) of the Companies Act 2006 as documents that may be drawn up and delivered to the registrar in a language other than English, but which must, when delivered to the registrar, be accompanied by a certified translation into English.

- (2) The documents are a certified copy of a debenture or other instrument creating or evidencing a charge over the property of an overseas company to which this Part applies.

Transitional provisions and savings

- 28.** The Schedule to these Regulations contains transitional provisions and savings.

16th July 2009

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