



Companies Act 2006

2006 CHAPTER 46

PART 25

COMPANY CHARGES

CHAPTER 2

COMPANIES REGISTERED IN SCOTLAND

Charges requiring registration

878 Charges created by a company

- (1) A company that creates a charge to which this section applies must deliver the prescribed particulars of the charge, together with a copy certified as a correct copy of the instrument (if any) by which the charge is created or evidenced, to the registrar for registration before the end of the period allowed for registration.
- (2) Registration of a charge to which this section applies 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 the registration.
- (4) If a company fails to comply with subsection (1), an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

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- (6) Subsection (4) does not apply if registration of the charge has been effected on the application of some other person.
- (7) This section applies to the following charges—
 - (a) a charge on land or any interest in such land, other than a charge for any rent or other periodical sum payable in respect of the land,
 - (b) a security over incorporeal moveable property of any of the following categories—
 - (i) goodwill,
 - (ii) a patent or a licence under a patent,
 - (iii) a trademark,
 - (iv) a copyright or a licence under a copyright,
 - (v) a registered design or a licence in respect of such a design,
 - (vi) a design right or a licence under a design right,
 - (vii) the book debts (whether book debts of the company or assigned to it), and
 - (viii) uncalled share capital of the company or calls made but not paid,
 - (c) a security over a ship or aircraft or any share in a ship,
 - (d) a floating charge.

879 Charges which have to be registered: supplementary

- (1) A charge on land, for the purposes of section 878(7)(a), includes a charge created by a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35).
- (2) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 878(7)(a), deemed to be an interest in land.
- (3) It is immaterial for the purposes of this Chapter where land subject to a charge is situated.
- (4) The deposit by way of security of a negotiable instrument given to secure the payment of book debts is not, for the purposes of section 878(7)(b)(vii), to be treated as a charge on those book debts.
- (5) References in this Chapter to the date of the 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.
- (6) In this Chapter “company” means an incorporated company registered in Scotland.

880 Duty to register charges existing on property acquired

- (1) Subsection (2) applies 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.
- (2) The company must deliver the prescribed particulars of the charge, together with a copy (certified to be a correct copy) of the instrument (if any) by which the charge was

created or is evidenced, to the registrar for registration before the end of the period allowed for registration.

- (3) If default is made in complying with this section, an offence is committed by—
 - (a) the company, and
 - (b) every officer of it who is in default.
- (4) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

881 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 878(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 Chapter apply to the further charge as if—
 - (a) references in this Chapter (other than in this section) to a charge were references to the further charge, and
 - (b) references to the date of the creation of a charge were references to the date on which the further back letter or agreement was executed.

Special rules about debentures

882 Charge in series of debentures

- (1) 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 878 if the required particulars, 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) are delivered to the registrar before the end of the period allowed for registration.
- (2) The following are the required particulars—
 - (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.

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- (3) 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.
- (4) Failure to comply with subsection (3) does not affect the validity of any of those debentures.
- (5) Subsections (2) to (6) of section 878 apply for the purposes of this section as they apply for the purposes of that section but as if for the reference to the registration of the charge there was substituted a reference to the registration of the series of debentures.

883 Additional registration requirement for commission etc in relation to debentures

- (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 his—
 - (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 section 878 shall 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 section, treated as the issue of debentures at a discount.
- (3) Failure to comply with this section does not affect the validity of the debentures issued.

Charges on property outside the United Kingdom

884 Charges on property outside United Kingdom

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 878 even if 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.

The register of charges

885 Register of charges to be kept by registrar

- (1) The registrar shall keep, with respect to each company, a register of all the charges requiring registration under this Chapter.
- (2) In the case of a charge to the benefit of which holders of a series of debentures are entitled, the registrar shall enter in the register the required particulars specified in section 882(2).
- (3) In the case of any other charge, the registrar shall enter in the register the following particulars—

- (a) if it is a charge created by a company, the date of its creation and, if it is a charge which was existing on property acquired by the company, the date of the acquisition,
 - (b) the amount secured by the charge,
 - (c) short particulars of the property charged,
 - (d) the persons entitled to the charge, and
 - (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 registrar shall give a certificate of the registration of any charge registered in pursuance of this Chapter, stating—
 - (a) 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 issued), and
 - (b) 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 Chapter as to registration have been satisfied.
- (6) The register kept in pursuance of this section shall be open to inspection by any person.

886 The period allowed for registration

- (1) The period allowed for registration of a charge created by a company 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 a copy of the instrument by which the charge is created or evidenced could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (2) The period allowed for registration of a charge to which property acquired by a company is subject is—
 - (a) 21 days beginning with the day after the day on which the transaction is settled, or
 - (b) if the property is situated and the charge was created outside the United Kingdom, 21 days beginning with the day after the day on which a copy of the instrument by which the charge is created or evidenced could, in due course of post (and if despatched with due diligence) have been received in the United Kingdom.
- (3) The period allowed for registration of particulars of a series of debentures as a result of section 882 is—
 - (a) if there is a deed containing the charge mentioned in section 882(1), 21 days beginning with the day after the day on which that deed is executed, or
 - (b) if there is no such deed, 21 days beginning with the day after the day on which the first debenture of the series is executed.

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887 Entries of satisfaction and relief

- (1) Subsection (2) applies if a statement is delivered to the registrar 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.
- (2) If the charge is a floating charge, 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 him for the purpose, verifying that the statement mentioned in subsection (1) is correct, or
 - (b) a direction obtained from the court, on the ground that the statement by the creditor mentioned in 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) regarding the fact contained in the statement mentioned in subsection (1).
- (4) Where the registrar enters a memorandum of satisfaction in whole, he shall, if required, furnish the company with a copy of the memorandum.
- (5) 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.

888 Rectification of register of charges

- (1) Subsection (2) applies 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
 - (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.
- (2) 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.

Avoidance of certain charges

889 Charges void unless registered

- (1) If a company creates a charge to which section 878 applies, the charge is void (so far as any security on the company's property or any part of it is conferred by the charge) against—

- (a) the liquidator of the company,
 - (b) an administrator of the company, and
 - (c) any creditor of the company
- unless that section is complied with.
- (2) Subsection (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 section the money secured by it immediately becomes payable.

Companies' records and registers

890 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 available for inspection.
- (2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

891 Company's register of charges

- (1) Every company shall keep available for inspection 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 commits an offence.
- (4) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

892 Instruments creating charges and register of charges to be available for inspection

- (1) This section applies to—
 - (a) documents required to be kept available for inspection under section 890 (copies of instruments creating charges), and
 - (b) a company's register of charges kept in pursuance of section 891.
- (2) The documents and register must be kept available for inspection—
 - (a) at the company's registered office, or
 - (b) at a place specified in regulations under section 1136.
- (3) The company must give notice to the registrar—
 - (a) of the place at which the documents and register are kept available for inspection, and
 - (b) of any change in that place,

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unless they have at all times been kept at the company's registered office.

- (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 such fee as may be prescribed.
- (5) If default is made for 14 days in complying with subsection (3) or an inspection required under subsection (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 section 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 subsection (4) is refused the court may by order compel an immediate inspection.