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STATUTORY INSTRUMENTS

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**2009 No. 1917**

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

**PART 3**

**REGISTRATION OF CHARGES**

*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(1), 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.

(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<sup>(2)</sup> (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.

(2) 1986 c.45.

(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
  - (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.