



Companies Act 1989

1989 CHAPTER 40

PART IV

REGISTRATION OF COMPANY CHARGES

Registration in the companies charges register

93 Charges requiring registration

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

“Registration in the company charges register

395 Introductory provisions

- (1) The purpose of this Part is to secure the registration of charges on a company’s property.
- (2) In this Part—
 - “charge” means any form of security interest (fixed or floating) over property, other than an interest arising by operation of law; and
 - “property”, in the context of what is the subject of a charge, includes future property.
- (3) It is immaterial for the purposes of this Part where the property subject to a charge is situated.
- (4) References in this Part to “the registrar” are—
 - (a) in relation to a company registered in England and Wales, to the registrar of companies for England and Wales, and
 - (b) in relation to a company registered in Scotland, to the registrar of companies for Scotland;

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and references to registration, in relation to a charge, are to registration in the register kept by him under this Part.

396 Charges requiring registration

- (1) The charges requiring registration under this Part are—
- (a) a charge on land or any interest in land, other than—
 - (i) in England and Wales, a charge for rent or any other periodical sum issuing out of the land,
 - (ii) in Scotland, a charge for any rent, ground annual or other periodical sum payable in respect of the land;
 - (b) a charge on goods or any interest in goods, other than a charge under which the chargee is entitled to possession either of the goods or of a document of title to them;
 - (c) a charge on intangible movable property (in Scotland, incorporeal moveable property) of any of the following descriptions—
 - (i) goodwill,
 - (ii) intellectual property,
 - (iii) book debts (whether book debts of the company or assigned to the company),
 - (iv) uncalled share capital of the company or calls made but not paid;
 - (d) a charge for securing an issue of debentures; or
 - (e) a floating charge on the whole or part of the company's property.
- (2) The descriptions of charge mentioned in subsection (1) shall be construed as follows—
- (a) a charge on a debenture forming part of an issue or series shall not be treated as falling within paragraph (a) or (b) by reason of the fact that the debenture is secured by a charge on land or goods (or on an interest in land or goods);
 - (b) in paragraph (b) “goods” means any tangible movable property (in Scotland, corporeal moveable property) other than money;
 - (c) a charge is not excluded from paragraph (b) because the chargee is entitled to take possession in case of default or on the occurrence of some other event;
 - (d) in paragraph (c)(ii) “intellectual property” means—
 - (i) any patent, trade mark, service mark, registered design, copyright or design right, or
 - (ii) any licence under or in respect of any such right;
 - (e) a debenture which is part of an issue or series shall not be treated as a book debt for the purposes of paragraph (c)(iii);
 - (f) the deposit by way of security of a negotiable instrument given to secure the payment of book debts shall not be treated for the purposes of paragraph (c)(iii) as a charge on book debts;
 - (g) a shipowner's lien on subfreights shall not be treated as a charge on book debts for the purposes of paragraph (c)(iii) or as a floating charge for the purposes of paragraph (e).

- (3) Whether a charge is one requiring registration under this Part shall be determined—
 - (a) in the case of a charge created by a company, as at the date the charge is created, and
 - (b) in the case of a charge over property acquired by a company, as at the date of the acquisition.
- (4) The Secretary of State may by regulations amend subsections (1) and (2) so as to add any description of charge to, or remove any description of charge from, the charges requiring registration under this Part.
- (5) 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.
- (6) In the following provisions of this Part references to a charge are, unless the context otherwise requires, to a charge requiring registration under this Part.

Where a charge not otherwise requiring registration relates to property by virtue of which it requires to be registered and to other property, the references are to the charge so far as it relates to property of the former description.”.

94 The companies charges register

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

“397 The companies charges register

- (1) The registrar shall keep for each company a register, in such form as he thinks fit, of charges on property of the company.
- (2) The register shall consist of a file containing with respect to each charge the particulars and other information delivered to the registrar under the provisions of this Part.
- (3) Any person may require the registrar to provide a certificate stating the date on which any specified particulars of, or other information relating to, a charge were delivered to him.
- (4) The certificate shall be signed by the registrar or authenticated by his official seal.
- (5) The certificate shall be conclusive evidence that the specified particulars or other information were delivered to the registrar no later than the date stated in the certificate; and it shall be presumed unless the contrary is proved that they were not delivered earlier than that date.”.

95 Delivery of particulars for registration

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

Status: This is the original version (as it was originally enacted).

“398 Company’s duty to deliver particulars of charge for registration

- (1) It is the duty of a company which creates a charge, or acquires property subject to a charge—
 - (a) to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration, and
 - (b) to do so within 21 days after the date of the charge’s creation or, as the case may be, the date of the acquisition;but particulars of a charge may be delivered for registration by any person interested in the charge.
- (2) Where the particulars are delivered for registration by a person other than the company concerned, that person is entitled to recover from the company the amount of any fees paid by him to the registrar in connection with the registration.
- (3) If a company fails to comply with subsection (1), then, unless particulars of the charge have been delivered for registration by another person, the company and every officer of it who is in default is liable to a fine.
- (4) Where prescribed particulars in the prescribed form are delivered to the registrar for registration, he shall file the particulars in the register and shall note, in such form as he thinks fit, the date on which they were delivered to him.
- (5) The registrar shall send to the company and any person appearing from the particulars to be the chargee, and if the particulars were delivered by another person interested in the charge to that person, a copy of the particulars filed by him and of the note made by him as to the date on which they were delivered.

399 Effect of failure to deliver particulars for registration

- (1) Where a charge is created by a company and no prescribed particulars in the prescribed form are delivered for registration within the period of 21 days after the date of the charge’s creation, the charge is void against—
 - (a) an administrator or liquidator of the company, and
 - (b) any person who for value acquires an interest in or right over property subject to the charge,where the relevant event occurs after the creation of the charge, whether before or after the end of the 21 day period.

This is subject to section 400 (late delivery of particulars).
- (2) In this Part “the relevant event” means—
 - (a) in relation to the voidness of a charge as against an administrator or liquidator, the beginning of the insolvency proceedings, and
 - (b) in relation to the voidness of a charge as against a person acquiring an interest in or right over property subject to a charge, the acquisition of that interest or right;and references to “a relevant event” shall be construed accordingly.

- (3) Where a relevant event occurs on the same day as the charge is created, it shall be presumed to have occurred after the charge is created unless the contrary is proved.

400 Late delivery of particulars

- (1) Where prescribed particulars of a charge created by a company, in the prescribed form, are delivered for registration more than 21 days after the date of the charge's creation, section 399(1) does not apply in relation to relevant events occurring after the particulars are delivered.
- (2) However, where in such a case—
- (a) the company is at the date of delivery of the particulars unable to pay its debts, or subsequently becomes unable to pay its debts in consequence of the transaction under which the charge is created, and
 - (b) insolvency proceedings begin before the end of the relevant period beginning with the date of delivery of the particulars,
- the charge is void as against the administrator or liquidator.
- (3) For this purpose—
- (a) the company is “unable to pay its debts” in the circumstances specified in section 123 of the Insolvency Act 1986; and
 - (b) the “relevant period” is—
 - (i) two years in the case of a floating charge created in favour of a person connected with the company (within the meaning of section 249 of that Act),
 - (ii) one year in the case of a floating charge created in favour of a person not so connected, and
 - (iii) six months in any other case.
- (4) Where a relevant event occurs on the same day as the particulars are delivered, it shall be presumed to have occurred before the particulars are delivered unless the contrary is proved.”.

96 Delivery of further particulars

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

“401 Delivery of further particulars

- (1) Further particulars of a charge, supplementing or varying the registered particulars, may be delivered to the registrar for registration at any time.
- (2) Further particulars must be in the prescribed form signed by or on behalf of both the company and the chargee.
- (3) Where further particulars are delivered to the registrar for registration and appear to him to be duly signed, he shall file the particulars in the register and shall note, in such form as he thinks fit, the date on which they were delivered to him.

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- (4) The registrar shall send to the company and any person appearing from the particulars to be the chargee, and if the particulars were delivered by another person interested in the charge to that other person, a copy of the further particulars filed by him and of the note made by him as to the date on which they were delivered.”.

97 Effect of omissions and errors in registered particulars

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

“402 Effect of omissions and errors in registered particulars

- (1) Where the registered particulars of a charge created by a company are not complete and accurate, the charge is void, as mentioned below, to the extent that rights are not disclosed by the registered particulars which would be disclosed if they were complete and accurate.
- (2) The charge is void to that extent, unless the court on the application of the chargee orders otherwise, as against—
- (a) an administrator or liquidator of the company, and
 - (b) any person who for value acquires an interest in or right over property subject to the charge,
- where the relevant event occurs at a time when the particulars are incomplete or inaccurate in a relevant respect.
- (3) Where a relevant event occurs on the same day as particulars or further particulars are delivered, it shall be presumed to have occurred before those particulars are delivered unless the contrary is proved.
- (4) The court may order that the charge is effective as against an administrator or liquidator of the company if it is satisfied—
- (a) that the omission or error is not likely to have misled materially to his prejudice any unsecured creditor of the company, or
 - (b) that no person became an unsecured creditor of the company at a time when the registered particulars of the charge were incomplete or inaccurate in a relevant respect.
- (5) The court may order that the charge is effective as against a person acquiring an interest in or right over property subject to the charge if it is satisfied that he did not rely, in connection with the acquisition, on registered particulars which were incomplete or inaccurate in a relevant respect.
- (6) For the purposes of this section an omission or inaccuracy with respect to the name of the chargee shall not be regarded as a failure to disclose the rights of the chargee.”.

98 Memorandum of charge ceasing to affect company’s property

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

Status: This is the original version (as it was originally enacted).

“403 Memorandum of charge ceasing to affect company’s property

- (1) Where a charge of which particulars have been delivered ceases to affect the company’s property, a memorandum to that effect may be delivered to the registrar for registration.
- (2) The memorandum must be in the prescribed form signed by or on behalf of both the company and the chargee.
- (3) Where a memorandum is delivered to the registrar for registration and appears to him to be duly signed, he shall file it in the register, and shall note, in such form as he thinks fit, the date on which it was delivered to him.
- (4) The registrar shall send to the company and any person appearing from the memorandum to be the chargee, and if the memorandum was delivered by another person interested in the charge to that person, a copy of the memorandum filed by him and of the note made by him as to the date on which it was delivered.
- (5) If a duly signed memorandum is delivered in a case where the charge in fact continues to affect the company’s property, the charge is void as against—
 - (a) an administrator or liquidator of the company, and
 - (b) any person who for value acquires an interest in or right over property subject to the charge,where the relevant event occurs after the delivery of the memorandum.
- (6) Where a relevant event occurs on the same day as the memorandum is delivered, it shall be presumed to have occurred before the memorandum is delivered unless the contrary is proved.”.

99 Further provisions with respect to voidness of charges

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

“Further provisions with respect to voidness of charges

404 Exclusion of voidness as against unregistered charges

- (1) A charge is not void by virtue of this Part as against a subsequent charge unless some or all of the relevant particulars of that charge are duly delivered for registration—
 - (a) within 21 days after the date of its creation, or
 - (b) before complete and accurate relevant particulars of the earlier charge are duly delivered for registration.
- (2) Where relevant particulars of the subsequent charge so delivered are incomplete or inaccurate, the earlier charge is void as against that charge only to the extent that rights are disclosed by registered particulars of the subsequent charge duly delivered for registration before the corresponding relevant particulars of the earlier charge.

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- (3) The relevant particulars of a charge for the purposes of this section are those prescribed particulars relating to rights inconsistent with those conferred by or in relation to the other charge.

405 Restrictions on voidness by virtue of this Part

- (1) A charge is not void by virtue of this Part as against a person acquiring an interest in or right over property where the acquisition is expressly subject to the charge.
- (2) Nor is a charge void by virtue of this Part in relation to any property by reason of a relevant event occurring after the company which created the charge has disposed of the whole of its interest in that property.

406 Effect of exercise of power of sale

- (1) A chargee exercising a power of sale may dispose of property to a purchaser freed from any interest or right arising from the charge having become void to any extent by virtue of this Part—
- (a) against an administrator or liquidator of the company, or
 - (b) against a person acquiring a security interest over property subject to the charge;
- and a purchaser is not concerned to see or inquire whether the charge has become so void.
- (2) The proceeds of the sale shall be held by the chargee in trust to be applied—
- First, in discharge of any sum effectively secured by prior incumbrances to which the sale is not made subject;
 - Second, in payment of all costs, charges and expenses properly incurred by him in connection with the sale, or any previous attempted sale, of the property;
 - Third, in discharge of any sum effectively secured by the charge and incumbrances ranking *pari passu* with the charge;
 - Fourth, in discharge of any sum effectively secured by incumbrances ranking after the charge;
- and any residue is payable to the company or to a person authorised to give a receipt for the proceeds of the sale of the property.
- (3) For the purposes of subsection (2)—
- (a) prior incumbrances include any incumbrance to the extent that the charge is void as against it by virtue of this Part; and
 - (b) no sum is effectively secured by a charge to the extent that it is void as against an administrator or liquidator of the company.
- (4) In this section—
- (a) references to things done by a chargee include things done by a receiver appointed by him, whether or not the receiver acts as his agent;
 - (b) “power of sale” includes any power to dispose of, or grant an interest out of, property for the purpose of enforcing a charge (but in relation to Scotland does not include the power to grant a lease), and references to “sale” shall be construed accordingly; and

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- (c) “purchaser” means a person who in good faith and for valuable consideration acquires an interest in property.
- (5) The provisions of this section as to the order of application of the proceeds of sale have effect subject to any other statutory provision (in Scotland, any other statutory provision or rule of law) applicable in any case.
- (6) Where a chargee exercising a power of sale purports to dispose of property freed from any such interest or right as is mentioned in subsection (1) to a person other than a purchaser, the above provisions apply, with any necessary modifications, in relation to a disposition to a purchaser by that person or any successor in title of his.
- (7) In Scotland, subsections (2) and (7) of section 27 of the Conveyancing and Feudal Reform (Scotland) Act 1970 apply to a chargee unable to obtain a discharge for any payment which he is required to make under subsection (2) above as they apply to a creditor in the circumstances mentioned in those subsections.

407 Effect of voidness on obligation secured

- (1) Where a charge becomes void to any extent by virtue of this Part, the whole of the sum secured by the charge is payable forthwith on demand; and this applies notwithstanding that the sum secured by the charge is also the subject of other security.
- (2) Where the charge is to secure the repayment of money, the references in subsection (1) to the sum secured include any interest payable.”.

100 Additional information to be registered

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

“Additional information to be registered

408 Particulars of taking up of issue of debentures

- (1) Where particulars of a charge for securing an issue of debentures have been delivered for registration, it is the duty of the company—
 - (a) to deliver to the registrar for registration particulars in the prescribed form of the date on which any debentures of the issue are taken up, and of the amount taken up, and
 - (b) to do so before the end of the period of 21 days after the date on which they are taken up.
- (2) Where particulars in the prescribed form are delivered to the registrar for registration under this section, he shall file them in the register.
- (3) If a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine.

Status: This is the original version (as it was originally enacted).

409 Notice of appointment of receiver or manager, &c

- (1) If a person obtains an order for the appointment of a receiver or manager of a company's property, or appoints such a receiver or manager under powers contained in an instrument, he shall within seven days of the order or of the appointment under those powers, give notice of that fact in the prescribed form to the registrar for registration.
- (2) Where a person appointed receiver or manager of a company's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give notice of that fact in the prescribed form to the registrar for registration.
- (3) Where a notice under this section in the prescribed form is delivered to the registrar for registration, he shall file it in the register.
- (4) If a person makes default in complying with the requirements of subsection (1) or (2), he is liable to a fine.
- (5) This section does not apply in relation to companies registered in Scotland (for which corresponding provision is made by sections 53, 54 and 62 of the Insolvency Act 1986).

410 Notice of crystallisation of floating charge, &c

- (1) The Secretary of State may by regulations require notice in the prescribed form to be given to the registrar of—
 - (a) the occurrence of such events as may be prescribed affecting the nature of the security under a floating charge of which particulars have been delivered for registration, and
 - (b) the taking of such action in exercise of powers conferred by a fixed or floating charge of which particulars have been delivered for registration, or conferred in relation to such a charge by an order of the court, as may be prescribed.
- (2) The regulations may make provision as to—
 - (a) the persons by whom notice is required to be, or may be, given, and the period within which notice is required to be given;
 - (b) the filing in the register of the particulars contained in the notice and the noting of the date on which the notice was given; and
 - (c) the consequences of failure to give notice.
- (3) As regards the consequences of failure to give notice of an event causing a floating charge to crystallise, the regulations may include provision to the effect that the crystallisation—
 - (a) shall be treated as ineffective until the prescribed particulars are delivered, and
 - (b) if the prescribed particulars are delivered after the expiry of the prescribed period, shall continue to be ineffective against such persons as may be prescribed,subject to the exercise of such powers as may be conferred by the regulations on the court.

Status: This is the original version (as it was originally enacted).

- (4) The regulations may provide that if there is a failure to comply with such of the requirements of the regulations as may be prescribed, such persons as may be prescribed are liable to a fine.
- (5) 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.
- (6) Regulations under this section shall not apply in relation to a floating charge created under the law of Scotland by a company registered in Scotland.”.