

SCHEDULES

SCHEDULE 15

Section 105.

CHARGES ON PROPERTY OF OVERSEA COMPANIES

The following provisions are inserted in Part XXIII of the Companies Act 1985—

“CHAPTER III

REGISTRATION OF CHARGES

703A Introductory provisions

- (1) The provisions of this Chapter have effect for securing the registration in Great Britain of charges on the property of a registered overseas company.
- (2) Section 395(2) and (3) (meaning of “charge” and “property”) have effect for the purposes of this Chapter.
- (3) A “registered overseas company”, in relation to England and Wales or Scotland, means an overseas company which has duly delivered documents to the registrar for that part of Great Britain under section 691 and has not subsequently given notice to him under section 696(4) that it has ceased to have an established place of business in that part.
- (4) References in this Chapter to the registrar shall be construed in accordance with section 703E below and references to registration, in relation to a charge, are to registration in the register kept by him under this Chapter.

703B Charges requiring registration

- (1) The charges requiring registration under this Chapter are those which if created by a company registered in Great Britain would require registration under Part XII of this Act.
- (2) Whether a charge is one requiring registration under this Chapter shall be determined—
 - (a) in the case of a charge over property of a company at the date it delivers documents for registration under section 691, as at that date,
 - (b) in the case of a charge created by a registered overseas company, as at the date the charge is created, and
 - (c) in the case of a charge over property acquired by a registered overseas company, as at the date of the acquisition.
- (3) In the following provisions of this Chapter references to a charge are, unless the context otherwise requires, to a charge requiring registration under this Chapter.

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.

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703C The register

- (1) The registrar shall keep for each registered overseas 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 such charge the particulars and other information delivered to the registrar under or by virtue of the following provisions of this Chapter.
- (3) Section 397(3) to (5) (registrar's certificate as to date of delivery of particulars) applies in relation to the delivery of any particulars or other information under this Chapter.

703D Company's duty to deliver particulars of charges for registration

- (1) If when an overseas company delivers documents for registration under section 691 any of its property is situated in Great Britain and subject to a charge, it is the company's duty at the same time to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.
- (2) Where a registered overseas company—
 - (a) creates a charge on property situated in Great Britain, or
 - (b) acquires property which is situated in Great Britain and subject to a charge,it is the company's duty to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration within 21 days after the date of the charge's creation or, as the case may be, the date of the acquisition.

This subsection does not apply if the property subject to the charge is at the end of that period no longer situated in Great Britain.
- (3) Where the preceding subsections do not apply and property of a registered overseas company is for a continuous period of four months situated in Great Britain and subject to a charge, it is the company's duty before the end of that period to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.
- (4) Particulars of a charge required to be delivered under subsections (1), (2) or (3) may be delivered for registration by any person interested in the charge.
- (5) If a company fails to comply with subsection (1), (2) or (3), 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.
- (6) Section 398(2), (4) and (5) (recovery of fees paid in connection with registration, filing of particulars in register and sending of copy of particulars filed and note as to date) apply in relation to particulars delivered under this Chapter.

703E Registrar to whom particulars, &c. to be delivered

- (1) The particulars required to be delivered by section 703D(1) (charges over property of overseas company becoming registered in a part of Great Britain) shall be delivered to the registrar to whom the documents are delivered under section 691.
- (2) The particulars required to be delivered by section 703D(2) or (3) (charges over property of registered overseas company) shall be delivered—
 - (a) if the company is registered in one part of Great Britain and not in the other, to the registrar for the part in which it is registered, and

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(b) if the company is registered in both parts of Great Britain but the property subject to the charge is situated in one part of Great Britain only, to the registrar for that part;

and in any other case the particulars shall be delivered to the registrars for both parts of Great Britain.

(3) Other documents required or authorised by virtue of this Chapter to be delivered to the registrar shall be delivered to the registrar or registrars to whom particulars of the charge to which they relate have been, or ought to have been, delivered.

(4) If a company gives notice under section 696(4) that it has ceased to have an established place of business in either part of Great Britain, charges over property of the company shall cease to be subject to the provisions of this Chapter, as regards registration in that part of Great Britain, as from the date on which notice is so given.

This is without prejudice to rights arising by reason of events occurring before that date.

703F Effect of failure to deliver particulars, late delivery and effect of errors and omissions

(1) The following provisions of Part XII—

- (a) section 399 (effect of failure to deliver particulars),
- (b) section 400 (late delivery of particulars), and
- (c) section 402 (effect of errors and omissions in particulars delivered),

apply, with the following modifications, in relation to a charge created by a registered overseas company of which particulars are required to be delivered under this Chapter.

(2) Those provisions do not apply to a charge of which particulars are required to be delivered under section 703D(1) (charges existing when company delivers documents under section 691).

(3) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for requisite period), the references to the period of 21 days after the charge's creation shall be construed as references to the period of four months referred to in that subsection.

703G Delivery of further particulars or memorandum

Sections 401 and 403 (delivery of further particulars and memorandum of charge ceasing to affect company's property) apply in relation to a charge of which particulars have been delivered under this Chapter.

703H Further provisions with respect to voidness of charges

(1) The following provisions of Part XII apply in relation to the voidness of a charge by virtue of this Chapter—

- (a) section 404 (exclusion of voidness as against unregistered charges),
- (b) section 405 (restrictions on cases in which charge is void),
- (c) section 406 (effect of exercise of power of sale), and
- (d) section 407 (effect of voidness on obligation secured).

(2) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for

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requisite period), the reference in section 404 to the period of 21 days after the charge's creation shall be construed as a reference to the period of four months referred to in that subsection.

703I Additional information to be registered

- (1) Section 408 (particulars of taking up of issue of debentures) applies in relation to a charge of which particulars have been delivered under this Chapter.
- (2) Section 409 (notice of appointment of receiver or manager) applies in relation to the appointment of a receiver or manager of property of a registered overseas company.
- (3) Regulations under section 410 (notice of crystallisation of floating charge, &c.) may apply in relation to a charge of which particulars have been delivered under this Chapter; but subject to such exceptions, adaptations and modifications as may be specified in the regulations.

703J Copies of instruments and register to be kept by company

- (1) Sections 411 and 412 (copies of instruments and register to be kept by company) apply in relation to a registered overseas company and any charge over property of the company situated in Great Britain.
- (2) They apply to any charge, whether or not particulars are required to be delivered to the registrar.
- (3) In relation to such a company the references to the company's registered office shall be construed as references to its principal place of business in Great Britain.

703K Power to make further provision by regulations

- (1) The Secretary of State may by regulations make further provision as to the application of the provisions of this Chapter, or the provisions of Part XII applied by this Chapter, in relation to charges of any description specified in the regulations.
- (2) The regulations may apply any provisions of regulations made under section 413 (power to make further provision with respect to application of Part XII) or make any provision which may be made under that section with respect to the application of provisions of Part XII.

703L Provisions as to situation of property

- (1) The following provisions apply for determining for the purposes of this Chapter whether a vehicle which is the property of an overseas company is situated in Great Britain—
 - (a) a ship, aircraft or hovercraft shall be regarded as situated in Great Britain if, and only if, it is registered in Great Britain;
 - (b) any other description of vehicle shall be regarded as situated in Great Britain on a day if, and only if, at any time on that day the management of the vehicle is directed from a place of business of the company in Great Britain;and for the purposes of this Chapter a vehicle shall not be regarded as situated in one part of Great Britain only.
- (2) For the purposes of this Chapter as it applies to a charge on future property, the subject-matter of the charge shall be treated as situated in Great Britain unless it relates

exclusively to property of a kind which cannot, after being acquired or coming into existence, be situated in Great Britain; and references to property situated in a part of Great Britain shall be similarly construed.

703M Other supplementary provisions

The following provisions of Part XII apply for the purposes of this Chapter—

- (a) section 414 (construction of references to date of creation of charge),
- (b) section 415 (prescribed particulars and related expressions),
- (c) section 416 (notice of matters disclosed on the register),
- (d) section 417 (power of court to dispense with signature),
- (e) section 418 (regulations) and
- (f) section 419 (minor definitions).

703N Index of defined expressions

The following Table shows the provisions of this Chapter and Part XII defining or otherwise explaining expressions used in this Chapter (other than expressions used only in the same section)—

charge	sections 703A(2), 703B(3) and 395(2)
charge requiring registration	sections 703B(1) and 396
creation of charge	sections 703M(f) and 419(2)
date of acquisition (of property by a company)	sections 703M(f) and 419(3)
date of creation of charge	sections 703M(a) and 414
property	sections 703A(2) and 395(2)
registered overseas company	section 703A(3)
registrar and registration in relation to a charge	sections 703A(4) and 703E
situated in Great Britain in relation to vehicles	section 703L(1)
in relation to future property	section 703L(2)”
