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PRACTICE NOTE

NMVPN7/2014

Date: 7th Jan 2014

The Companies Act 2006

Company Charges and Mortgages

This Practice Note replaces NMVPN7/2011 "Company Charges and Mortgages" issued on 1st April 2011.

Introduction

NOTE:- This Practice Note is issued by the Department of Enterprise in its capacity as Registrar of Companies under the Companies Act 2006 ("the Act"). All references, unless specifically stated, are to that Act only.

Copies of Acts of Tynwald dealt with by the Companies Registry can be found on the following website administered by the Attorney General:

<http://www.legislation.gov.im/cms/index.php>

This practice note sets out the procedure for registering a charge and a satisfaction of a charge with the Department under the provisions of Part VIII of the Act. It is intended as a general guide only and must be read in conjunction with the relevant legislation. It should not be relied upon and should not be used as a substitute for legal advice.

Contents

- 1. Registering a Charge**
- 2. Registering a Charge Late**
- 3. Registering a Variation in a Charge**
- 4. What Fees are Payable**
- 5. Registering a Notice of Ceasing to Affect Property**
- 6. Enforcing a Charge**
- 7. Further Information**

1. **Registering a Charge**

1.1 **Which charges must be registered?**

Section 136 (1) of the Act has the following definitions:

“charge” means any form of security interest, whether fixed or floating,, over property, wherever situated, other than an interest arising by operation of law;

“company property” means property of any nature which is beneficially owned by the company and includes future property.

1.2 **When should a charge be registered?**

Failure to register a charge will result in the charge being void against the liquidator and any creditor of the company. A charge should be registered within 1 month of its creation, but even if it is not registered within that 1 month, it may be registered at any time thereafter, **but prior to the company going into liquidation**. You can also register a variation in the particulars of a registered charge, and there is no time limit set for doing this. When a charge ceases to affect any company property, you may file a notice to show this. Again, there is no time limit set for this.

1.3 **Which form should I use?**

The form varies depending on the circumstances. The following is a guide to the available forms:

Purpose	Form Number
Particulars of a charge (including a charge on property acquired)	IM16
Particulars of a charge filed late (-do.-)	IM18
Particulars of variation in a registered charge (-do.-)	IM17
Notice of ceasing to affect property	IM19

The completion of these forms is described in further detail later on in this practice note.

Copies of all these forms are available on the Departments website:

www.companiesregistry.gov.im .

1.4 **How do I get it right first time?**

- The registration of a charge on Form IM16 can be made by either of the following parties:
 - (a) the chargee, or a person authorised to act on its behalf; or
 - (b) the company, or a person authorised to act on its behalf.
- There is no requirement to submit as part of the registration process, the document creating the charge. As the Department will have no independent evidence that the particulars stated on the form are correct and/or complete, **it is the total responsibility of the person completing the form to ensure that the particulars given are accurate and complete.**

Some details to watch:-

- Make sure the company name and number are correct. Remember that if the company changes its name, the new name is only legally changed on the day the change of name certificate is issued by the Department.
- Please ensure that you use the correct form; in particular, if the company was a 1931 Act company which has re-registered under the Act or is in the process of re-registering, any charge registration must be under the 2006 Act regardless of the date of creation of the charge.
- Make sure the creation date and description of the charge you put on the form agree with the date and description of the document creating the charge.
- Make sure the amount secured you specify accurately reflects what is stated in the charge document. If the charge document does not quote a specific amount of loan, please reflect the description stated (eg: All Monies or All Liabilities).
- Make sure the description you give of the property charged accurately reflects what is stated in the charge document and that all the relevant property is included. If you are registering a charge created by a protected Cell Company, please ensure that you specify the relevant Cell.
- Make sure the name of the chargee you put on the form matches the name on the charge document. ('Chargee' means the person who benefits from the property if the debt is not repaid).
- If the date of creation is different from the date of execution, the relevant date to put on the form is the date of creation.
- Ensure that you sign and date the form, and that you are entitled to sign it.
- Complete the form legibly using black ink or, preferably, type the form. The Department may refuse documents that are illegible, or not suitable for scanning and reproduction.

This is an area where mistakes can have unforeseen and potentially costly consequences. Charges can be registered for a prolonged period so errors or omissions may not come to light for a number of years. If you are uncertain about any requirement under the Act you must seek appropriate legal advice.

PLEASE NOTE: There is no provision in the Act to correct omissions or mis-statements on the Form once registered. If the registration form is incorrect or incomplete, you will need to seek legal advice to determine the legal position of all parties.

1.5 What happens when the application for registration reaches the Department?

We will check the form to ensure that all relevant parts have been completed. **We will not check for accuracy or completeness of the particulars given.** If the form is acceptable, we register the details and produce a certificate of registration. We will send the certificate to the presenter, and scan and record the form and copy certificate for the public record.

1.6 What must I do if a company acquires property that is already subject to a charge?

If the charge would have been registerable if the company had passed the charge itself, then you should notify us of the fact that the company has acquired the charged property. To do this the chargee or the company may complete and send Form IM16 to the Department within 1 month of acquiring the property. The guidance in paragraph 1.4 applies in this situation also.

2. Registering a Charge Late

2.1 What is the effect if the charge is not registered within the one month filing period?

If a charge is not registered within the one month filing period, it can be registered at any time thereafter (without recourse to the Court) under the provisions of section 140 of the Act using Form IM18, but this must be done before the company is put into liquidation. The same principles as outlined in paragraph 1.5 apply to this type of registration also. If a charge is not registered at all, then it is void (cannot be relied upon) against a liquidator or any creditor of the company. This means that the debt for which the charge was given will remain payable, but it will be unsecured.

Please remember that the date of registration of a charge affects its enforceability and prioritisation.

3. Registering a Variation in a Charge

3.1 Should I do anything if any of the registered details change?

The chargee or the company may send details of a variation in the terms of a charge to the Department on a Form IM17. You do not have to do this, and if you do, there is no time limit within which it must be done. As with registering the charge itself, it is the total responsibility of the person completing the Form IM17 to ensure that the particulars given are accurate and complete, as we will take the contents of the form at face value and undertake no further checks.

We will send the certificate of registration to the presenter, and scan and record the form and copy certificate.

PLEASE NOTE

This facility can only be used for changes to an EXISTING REGISTERED CHARGE. If a variation mean that a new charge has been created, i.e further moneys or property have been secured, this would require a new Particulars of Charge form to be filed. If you are in any doubt about this, please take appropriate legal advice as soon as possible because of any legal implications involved in not registering the charge within 1 month of its creation.

4. What Fees are Payable

Registration of a charge under section 138 (IM16) or section 140 of the Act (IM18) - **£25.00**

5. Registering a Notice of Ceasing to Affect Property

5.1 What should I do when the debt secured by the charge is paid off (or 'satisfied')?

The chargee or the company may inform the Department if a charge has been fully or partly satisfied by completing a Form IM19. You are not required by law to notify us but it is in the company's own interests that potential investors and lenders know that all or part of the debt has been paid off and the company cannot be dissolved if the register shows outstanding charges. The Form must have attached to it proof that the debt secured by the charge has been paid off. This would normally take the form of written confirmation of the fact from the chargee, We will also accept a copy of any official document which shows the release or satisfaction of the charge.

Please note only one satisfaction can be registered per Form.

We will send the certificate of registration to the presenter, and scan and record the form and copy certificate.

5.2 What if property (being part of the property secured by a charge) ceases to be charged or to belong to the company?

The chargee or the company should inform the Companies Registry that the property has been released from the charge. A Form IM19 should be completed, showing the extent of the release or satisfaction.

5.3 Is there a fee for registering the notice?

A fee of **£10.00** is payable under section 141 of the Act for the registration of a Form IM19. There is no prescribed filing period. However, it is in the company's own interests to let potential investors and lenders know that all or part of the debt has been paid off as soon as possible.

5.4 How do I get it right first time?

- Select the correct Form (see above) and send it to the Department.
- Fill in a separate Form for each charge being satisfied.
- The Form should be signed by either the chargee or the company, or by some person authorised to act on their behalf.
- Please ensure that you use the correct Form; in particular, if the company was a 1931 Act company which has re-registered under the Act or is in the process of re-registering, any changes to the charge must be under the 2006 Act regardless of the date of creation of the charge.
- Make sure the details on the Form are correct and match both the document creating the charge and the evidence of its satisfaction. If we find differences, we will return the documents to the registered office for clarification.
- Make sure the company name and number are correct. Remember that a company name is only changed on the day the change of name certificate is issued by the Department.
- The creation and registration date, the description of the document and the details of the charged property should reflect the details on the public record.
- The name of the chargee should match the instrument or provide evidence that the charge has been assigned.
- The Form should be accompanied by proof of discharge (see note 4.1).
- Sign and date the Form.
- Complete the Forms legibly using black ink or, preferably, type the form. The Department may refuse documents that are illegible, or not suitable for scanning and reproduction.

6. Enforcement of Charges and Mortgages

6.1 If the charge allows, a chargee may appoint a receiver or manager, or ask the court to appoint a receiver or manager, over the property charged. The chargee must notify the appointment of a receiver or manager to the Department within 7 days of the appointment using Form IM08.

On ceasing to act, a receiver or manager must notify us using Form IM09.

7. Further Information

Our staff will willingly answer general queries by telephone or e-mail but cannot give legal advice. If you require such advice you should consult an Advocate. The telephone number for the Companies Registry is: 01624 689389 and the e-mail address is: companies@gov.im

Statutory forms and practice notes are available free of charge from the website: www.companiesregistry.gov.im.

Forms can also be obtained from legal stationers, accountants, advocates and Corporate Service Providers whose addresses can be found in the business section of the telephone book or at: www.manx-ads.com

A list of Licenceholders is available on the Isle of Man Financial Supervision Authority website at www.fsa.gov.im / Licenceholders.

Details of Isle of Man Advocates are available from the Isle of Man Law Society at:

Isle of Man Law Society
27 Hope Street
Douglas
Isle of Man
IM1 1AR

Tel: (01624) 662910

Fax: (01624) 679232

E-mail: iomlawsoc@advsys.co.uk

<http://www.iomlawsociety.co.im/index.htm>

Documents may be submitted at any time during office hours (9.00am to 4.30pm Monday to Thursday and 9.15am to 4.00pm on Friday) 'over the counter' in the Companies Registry.

Submission may also be effected by post or after office hours by way of the letterbox located in the main door of the registries building on Deemsters Walk, Bucks Road, Douglas. Presenters requiring acknowledgement of receipt of a document should provide a stamped self-addressed envelope.

The Companies Registry will remain closed on the first Wednesday of each month until 11.00 hrs for staff training. Documents can still be left in the letterbox.

For the purpose of determining the date of submission of a document, documents submitted after 4.30 p.m. on any working day (Day 1) but before 9.00 a.m. on the following working day (Day 2), will be treated as having been submitted on Day 1. For the avoidance of doubt, documents submitted before 9.00 a.m. on the day immediately following a weekend or Bank Holiday will be treated as having been submitted on the last working day prior to the weekend or Bank Holiday.

However, section 208(3) of the Companies Act 2006 states that a document which is not accepted for registration and has been rejected under the provisions of section 208(1), will not be considered to have been submitted at all.

It is the responsibility of presenters to ensure that documents arrive in the Companies Registry within the filing periods prescribed.

We are aware that post can on occasion be delayed. However presenters should be aware of that and post documents in plenty of time. The Companies Registry cannot operate a system which allows for such delays as to do so would simply amount to an extension to the filing periods set down by law.

<p>Please note: The Department does not currently accept statutory documents by fax or E-Mail.</p>
