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PRACTICE NOTE

PN23/2016

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Company Charges and Mortgages

Introduction

This Practice Note replaces Practice Note 23/2011 “Company Charges and Mortgages” issued on 1st April 2011.

This practice note sets out the procedure for registering a charge with the Department for Enterprise - Companies Registry in accordance with Part III of the Companies Act 1931 and Schedule 3 of the Limited Liability Companies Act 1996. 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.

The practice note includes some information about amendments to Part III of the Companies Act 1931 and Schedule 3 of the Limited Liability Companies Act 1996 introduced by the Companies Etc (Amendment) Act 2003 which allow the voluntary registration of any change to the particulars of a previously registered charge.

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1. Registration of Charges and Mortgages

1.1 Which charges must be registered?

Section 79 of the IOM Companies Act 1931 lists the charges that must be registered in the Isle of Man. These are:-

- a charge for the purpose of securing any issue of debentures;
- a charge on uncalled share capital of the company;
- a charge created or evidenced by an instrument which, if executed by an individual, would require registration;
- a charge on land, wherever situate, or any interest therein;
- a charge on book debts of the company
- a floating charge on the undertaking or property of the company;
- a charge on calls made but not paid;
- a charge on a ship or an aircraft or any share in a ship;
- a charge on goodwill or on any intellectual property.

‘Intellectual property’ means-

- (a) any patent, trade mark, service mark, registered design, copyright or design right;
- (b) any licence under or in respect of any such right.

The charges which are registerable under Schedule 3 of the Limited Liability Companies Act 1996 are the same as those listed above with the exception of ‘a charge on uncalled share capital of the company’.

A charge comprising property of a company is only a charge to which this section applies if -

- (a) the company is beneficially interested in the property or, in the case of future property, is to be beneficially interested in that property; and
- (b) the company controls or is otherwise able to charge the legal interest in that property or, in the case of future property, is to control or otherwise to be able to charge that interest.

1.2 How much does each registration cost?

<http://www.gov.im/lib/docs/ded/companies/companiesReg/practicenotes/pn12014fees.pdf>

1.3 When must a charge be registered?

A charge must be registered within 1 month of its creation. A court order is required to allow registration after the 1 month period.

1.4 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 mortgage or charge created by an IOM Registered Company	47
Particulars for the registration of a charge to secure a series of debentures	47A
Particulars of a charge subject to which property has been acquired	47B
Further particulars which supplement or vary the particulars of a registered mortgage or charge	47C
Particulars of an issue of secured debentures in a series	48
Memorandum of satisfaction in full or in part of a mortgage or charge	49
Particulars of a charge on a 'LLC' company	L201
Particulars of series of debentures on a 'LLC' company	L202
Particulars of a charge on acquired property on a 'LLC' company	L204
Memorandum of satisfaction of a charge on a 'LLC' company	L205
Further particulars which supplement or vary the particulars of a registered mortgage or charge	L206

Copies of all these forms are available on the website: www.gov.im/categories/business-and-industries/companies-registry

1.5 How do I get it right first time?

- Act as quickly as possible: you have only one month from the date of creation of the charge to register the correct details. Select the correct form and follow any notes on the form itself.
- Extensions of time to allow for postal delays apply only if a charge is created outside the Isle of Man over property outside the Isle of Man. In that case, the one month runs from the date when the instrument creating or evidencing the charge, or a certified copy of it, could have been received in the Isle of Man in the normal course of post, assuming it was despatched with due diligence (normally an extra week is allowed).
- The document can be an original, or a certified copy of it, irrespective of whether the property secured is inside or outside the Isle of Man.
- A “certified copy” is a copy of the deed certified as a true copy under the seal of the company or certified by a person with an interest in the charge other than a person within the company.

- Send the document creating or evidencing the charge to us with the correct form, ensuring the details on the form are correct and match the document creating the charge. If we find differences, we will not register the charge and will return all the documents to the presenter. The documents will then need to be resubmitted to us still within the agreed one-month filing period or a court order will be needed to enable late registration to take place.

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.
- 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.
- 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).
- Where the charge is over registered land try to give the Title Number of the property.
- If the date of creation is different from the date of execution evidence of that date is required for registration purposes.
- Ensure that you sign and date the form, and that you are entitled to sign it.
- Complete the forms legibly using black ink or, preferably, type the form. The Companies Registry may refuse documents that are illegible, or not suitable for scanning and reproduction.

1.6 What happens when the application for registration reaches the Companies Registry?

We will check the form against the charge document to ensure that the form is accurate and the charge is registerable. If the form is acceptable, we take details from it to produce a certificate of registration and record an entry on the register of charges where required. We return the certificate and instrument to the presenter, and scan and record the form, copy certificate and register entry.

1.7 What is the effect if the charge is not registered in time?

If a registerable charge is not registered in time, or a court order is not obtained for late filing, 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.

If a company fails to register a charge, and no other interested party has registered it, then the company and every officer of the company who is in default are liable to a fine, Section 81(2), Companies Act 1931 and Sch. 3. para 4 (2) Limited Liability Companies Act 1996.

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

If the charge would have been registerable if the company had granted the charge itself, then the company must notify us of the fact that it has acquired the charged property. To do this the company must complete and send Form 47B or Form L204 (see above) to the Companies Registry, with a certified copy of any instrument that created or evidenced the charge.

This must be done within one month after the company completed the acquisition of the property. If the charged property is outside the Isle of Man and the charge was created outside the Isle of Man, the month runs from the date when the copy instrument could have been received in the Isle of Man in the normal course of post, assuming it had been despatched with due diligence (normally one week is allowed).

Late delivery of the details on Form 47B or L204 is an offence. The company and every officer of it who is in default are liable to a fine.

1.9 Can anyone else register the charge?

If the company does not submit a charge for registration, then the chargee or some other interested party can register the charge.

1.10 What about Foreign companies?

A foreign company is a company incorporated outside the Isle of Man that maintains a place of business in the Isle of Man.

If a Foreign company has a branch or other place of business in the Isle of Man and is registered under Part XI of the Companies Act 1931, it must register the following charges:

- charges which it creates over property which it owns in the Isle of Man.
- property in the Isle of Man acquired by the company that is already subject to a registerable charge.

All the information in this Practice Note which applies to charges over property in the Isle of Man owned by companies registered in the Isle of Man, also apply to 'F' companies.

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

From 1st November 2004 details of further particulars which supplement or vary the particulars of a registered charge may be forwarded to the Companies Registry on a Form 47C, 8AF or L206 depending on the type of company involved. You do not have to do this, and if you do, there is no time limit within which it must be done. However, any interested person may update the public record if they so wish.

PLEASE NOTE

- (1) This facility can only be used for changes to an EXISTING CHARGE. If the changes mean that a new charge has been created, 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 as any new charge must be registered within a month of its creation.
- (2) This facility cannot be used to correct an error or omission in the details supplied on the original registration of a charge. You will need to obtain an order from the Isle of Man High Court of Justice to do this.
- (3) The Companies Registry will not issue a new or amended certificate of registration if further particulars are filed.

2. Satisfaction of Charges and Mortgages

2.1 How many charges can be satisfied on the same form?

Only one charge can be satisfied per memorandum. We can no longer accept multiple satisfactions on a single form.

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

The company should inform the Companies Registry if a charge has been fully or partly satisfied. It is in the company's own interest that potential investors and lenders know that all or part of the debt has been paid off. A completed Form 49 or L205 must be submitted with proof of discharge from the chargee.

2.3 What is proof of discharge?

Proof of discharge is normally a letter, a copy of a deed of release (from the Deeds Registry), or some other formal correspondence from the lender confirming that the debt has been paid off in full or the extent to which the debt has been paid off. This accompanies the Form 49, Form L205, or a Form 12F.

2.4 What if a charged property ceases to be charged or to belong to the company?

The company should inform the Companies Registry that the company has been released from the charge. A Form 49, 12F or L205 should be completed and submitted with proof from the chargee that it no longer has an interest in the charged property. It is in the company's own interest to let potential investors and lenders know that all or part of the debt has been paid off as soon as possible.

2.5 Is there a fee for registering?

<http://www.gov.im/lib/docs/ded/companies/companiesReg/practicenotes/pn12014fees.pdf>

2.6 How do I get it right first time?

- Select the correct form (see above) and send it to the Companies Registry, following any notes on the form itself.
- The Declaration on the Form should be signed and properly declared before a Commissioner of Oaths, Notary Public or a Justice of the Peace. This can be done at Companies Registry if you file the Declaration in person.
- 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 Companies Registry.
- 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 charge document must be 'Executed as a Deed'; this means that it must be signed as a deed by the secretary and one director or two directors or the common seal must be impressed on the form which must then also be signed by two directors or one director and the secretary.
- The Form should be accompanied by proof of discharge (see note 2.2).
- Sign and date the form.
- Complete the forms legibly using black ink or, preferably, type the form. The Companies Registry may refuse documents that are illegible, or not suitable for scanning and reproduction.

3. Enforcement of Charges and Mortgages

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 Companies Registry within 7 days of the appointment using Form 53 or Form L20/7/1. We will then enter this in the company's register of charges where required.

On ceasing to act, a receiver or manager must notify us using Form 57A or L20/7/2. We will then enter the fact in the company's register of charges where required.

4. 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.gov.im/categories/business-and-industries/companies-registry .

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 Licence holders is available on the web site of the Financial Supervision Authority at www.iomfsa.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

Telephone: +44 (0)1624 662910

Fax: +44 (0)1624 679232

E-mail: enquiries@iomlawsociety.co.im

Website: www.iomlawsociety.co.im

Documents may be submitted to the Department at any time during office hours 9.00am to 4.30pm Monday to Thursday and 9.15am to 4.00pm 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 delivered to the first floor or 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.

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.

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