

TECHNICAL RELEASE TR .. /2015

COMPANIES ACT 2014

Charges and debentures

Readers of this document should note that the interpretation of detailed provisions of the Companies Act, 2014, has yet to be tested in the Courts.

November 2015

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INTRODUCTION

1. The provisions of Part 7, Charges and Debentures, Companies Act, 2014, (“Part 7”) came into force on Monday, 1st June 2015.
2. This Technical Release summarises key changes made by Part 7 to previous company legislation, including:
 - . the ability to submit to the Registrar of Companies a notice of intention to create a charge
 - . identification of documents which the Registrar will not accept for registration
 - . priority is determined by the date/time of receipt by the Registrar of the prescribed particulars
 - . prescribed statement informing Registrar of release of charge, instead of statutory declaration.
3. This Technical Release is intended to assist members in understanding the changes made to company legislation governing charges and debentures. However, it does not purport to be a detailed analysis of the provisions of Part 7.
4. Statutory references are to the relevant sections of Part 7, unless otherwise indicated.

REGISTRATION OF CHARGES

5. As under earlier company legislation, a charge may be registered by submitting the relevant particulars to the Registrar of Companies (“the Registrar”) within 21 days of creation of the charge (“one-stage procedure”).

6. However, *Section 409(4)* introduces an alternative “two-stage procedure” whereby a notice is delivered to the Registrar stating the company’s intention to create a charge and, not later than 21 days after delivery of that notice, a further notice is submitted stating the charge has been created. This procedure enhances the protection of the charge’s priority, the determination of which is addressed in Paragraphs 12 and 13 below.
7. Where the particulars submitted to the Registrar “...omit the required particulars in respect of one or more properties to which the charge relates ...”, *Section 409(2)* provides the charge shall be void only to the extent it relates to such properties.
8. Judgment mortgages must be registered within 21 days of notification to the judgment creditor by the Property Registration Authority of the mortgage’s creation.

REJECTION OF DOCUMENTS BY THE REGISTRAR

9. The Registrar has no duty or power to accept deeds or supplemental documents thereto (*Section 409(9)*) nor to accept an order, or notice of an order, affecting a shareholder or debenture holder of the company (*Section 427(1)*).
10. Generally, the Registrar is prohibited by *Section 412(6)* from entering in the Register of Charges particulars of a negative pledge, any events that crystallise a floating charge, or any restriction on the use of any charged asset.

CERTIFICATE OF REGISTRATION

11. This certificate, which is “conclusive evidence” that the registration requirements have been complied with, no longer states the amount of the charge following repeal of *Section 103(1)(b)(iv)*, Companies Act, 1963.

PRIORITY OF CHARGES

12. Until this Act came into force, in the absence of specific agreement to the contrary between the secured creditors, priority was determined by the date the charge was created.
13. *Section 412(3)* provides that priority will be determined henceforth by reference to the date of receipt by the Registrar of the prescribed particulars. The date (or time if particulars of two or more charges are submitted on the same day) of receipt is defined in *Section 412(4)* as when the prescribed particulars under the one-stage procedure, or the notice of intention to create a charge under the two-stage procedure, are received. Priority can be amended by agreement between the secured creditors.
14. Priority of judgment mortgages is determined in a similar manner.

SATISFACTION OR RELEASE OF CHARGE

15. Instead of the statutory declaration previously required, the Registrar can accept a statement signed by two directors of the company, or by a director and the company's secretary, as evidence of a charge's satisfaction or release.
16. If a person makes that statement when he or she "... did not honestly believe on reasonable grounds that the statement was true ...", *Section 416(6)* provides a court may, in particular circumstances, make the person personally liable for all, or such part as it decides, of the company's liabilities.

DEBENTURES

17. Following the repeal of Sections 91 and 92, Companies Act, 1963, the company need no longer keep a register of debenture holders. With that exception, Chapter 3, Part 7, which brings forward earlier company legislation on this subject, makes no substantive change thereto.