

PART III.

CHARGES AND MORTGAGES.

Registration of Charges and recording of Mortgages.

90. (1) Subject to the provisions of this Part every charge created after the fixed date by a company registered in the Colony and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, duly stamped by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Law within twenty-one days after the date

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of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

- (2) This section applies to the following charges :--
- (a) a charge for the purpose of securing any issue of debentures ;
 - (b) a charge on uncalled share capital of the company ;
 - (c) a charge on book debts of the company ;
 - (d) a floating charge on the undertaking or property of the company ;
 - (e) a charge on calls made but not paid ;
 - (f) a charge on a ship or any share in a ship ;
 - (g) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a licence under a copyright ;
 - (h) a charge on any other movable property created or evidenced by an instrument, where the company retains possession of such property ;
 - (i) a charge on immovable property, wherever situate, or any interest therein.

(3) In the case of a charge created out of the Colony comprising property situate outside the Colony, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the Colony shall be substituted for twenty-one days after the date of the creation of the charge as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the Colony but comprises property outside the Colony, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts.

(6) The holding of debentures entitling the holder to a charge on immovable property shall not for the purposes of this section be deemed to be an interest in immovable property.

(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purposes of this section, be sufficient if there are delivered to or received by the registrar, within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

- (a) the total amount secured by the whole series ; and
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined ; and
- (c) a general description of the property charged ; and
- (d) the names of the trustees, if any, for the debenture holders,

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series :

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(8) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this subsection, be treated as the issue of the debentures at a discount.

(9) In this Part—

(a) the expression “charge” does not include any mortgage of immovable property effected under any Law relating to the registration of mortgages of immovable property in force for the time being ;

(b) the expression “the fixed date” means in relation to the charges specified in paragraphs (h) and (i) of subsection (2), the 1st day of July, 1922, and in relation to the charges specified in paragraphs (a) to (g), both inclusive, of the said subsection, the date of the commencement of this Law.

Duty of company with regard to charges and mortgages created by company.

91. (1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 90, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) It shall be the duty of a company to send to the registrar of companies within twenty-one days after the date of every mortgage effected by the company on its immovable property under any Law relating to the registration of mortgages of immovable property in force for the time being, particulars thereof for recording, as well as particulars of any cancellation thereof in whole or in part, within twenty-one days after the date of such cancellation.

(4) If any company makes default—

(a) in sending to the registrar for registration the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as aforesaid, unless the registration has been effected on the application of some other person ; or

(b) in sending to the registrar for recording the particulars of any mortgage effected or cancelled under subsection (3),

then the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

92. (1) Where a company registered in the Colony acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Law within twenty-one days after the date on which the acquisition is completed :

Duty of company to register charges existing on property acquired.

Provided that, if the property is situate and the charge was created outside the Colony, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in the Colony shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

93. (1) The registrar of companies shall keep, with respect to each company, a register and a record in the prescribed form of all the charges requiring registration and of all the mortgages requiring recording respectively, under this Part, and shall, on payment of such fee as may be specified by regulations made by the Governor, enter in the register and record with respect to such charges and mortgages the following particulars :—

Register of charges to be kept by registrar of companies.

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(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (7) of section 90 ;

(b) in the case of any mortgage—

(i) the date and description of the instrument creating or evidencing the mortgage ; and

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(ii) the number and date of the certificate of mortgage ; and

(iii) the amount secured by the mortgage ; and

(iv) short particulars of the property mortgaged ; and

(v) the persons entitled to the mortgage ;

(c) in the case of any other charge—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property ; and

(ii) the amount secured by the charge ; and

(iii) short particulars of the property charged ; and

(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register and record kept in pursuance of this section shall be open to inspection by any person on payment of such fee, not exceeding fifty mils for each inspection as may be specified by regulations made by the Governor.

Endorsement of certificate of registration on debentures.

94. (1) The company shall cause a copy of every certificate of registration given under section 93 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding one hundred pounds.

95. The registrar of companies, on evidence being given to his satisfaction with respect to any registered charge,—

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he enters a memorandum of satisfaction in whole he shall, if required, furnish the company with a copy thereof.

96. The Court, on being satisfied that the omission to register a charge or to record a mortgage within the time required by this Law or that the omission or mis-statement of any particular with respect to any such charge or mortgage or in a memorandum of satisfaction or cancellation of mortgage, was accidental, or due to inadvertance or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the time for registration or recording shall be extended, or, as the case may be, that the omission or mis-statement shall be rectified.

97. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the registrar of companies, and the registrar shall, on payment of such fee as may be specified by regulations made by the Governor, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager,

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he shall, on so ceasing, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.