



Circular No 6 @ Jan 09

Registration of Mortgages and Charges

Companies House has prepared this circular to detail what mortgages and charges need to be registered Under Section 128 of the Companies Act. An effort has also been made to explain in what form the documentation should be presented to the Registry.

It is important to note that a mortgage or charge is a **TIME CRITICAL DOCUMENT** and this means that it must be registered within a certain period of time.

- **What Charges Must Be Registered?**

A company has a duty to register the following on the Register of Mortgages and charges:

1. A charge for the purpose of securing any issue of debentures.
2. A charge on uncalled share capital of the company.
3. A charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale.
4. A charge on Land. (wherever situated) or any interest therein.
5. A charge on book debts of the company.
6. A floating charge on the company's undertaking or property.
7. A charge on calls made but not paid.
8. A charge on a ship or aircraft or any share in a ship.
9. A charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

- **What Do The Various Terms Mean?**

Charge- security for the payment of a debt or other obligation which does not pass "property" or any right to possession to the person to whom the mortgage is given.

Mortgage - security for payment of a debt or other obligation which passes "property" but no right to possession to the person to whom the mortgage is given.

Debenture - an instrument issued by a company as evidence of a debt or other obligation. It includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not.

Uncalled Share Capital - the balance owing in respect of shares issued partly paid.

Bill of Sale - an instrument creating or evidencing a charge or mortgage over goods, including fixtures and agricultural crops in certain cases, but not including ships or aircraft.

Book Debts - debts which in the ordinary course of a company's business are commonly entered in its books.

Floating Charge - a charge which does not affect the assets charged until some event crystallizes the charge.

Calls Made - demands for payment of any part of the balance owing in respect of shares issued partly paid.

- **What Must I Do If My Company Acquires Property Which Is Already Charged?**

If a Company acquires property, which is already subject to a charge of a type, which the company would have had to register if it had created the charge itself, then the company must register the fact that it has acquired this property.

- **Documents To Be Delivered To The Registry**

The practice had been to deliver to the Registry the following two documents:

- (a) Short particulars of the charge or mortgage duly completed and signed
- (b) The document creating or evidencing the charge – i.e. the original copy creating or evidencing the charge EXCEPT where a charge is created outside Gibraltar over property situated outside Gibraltar. In such case it can be a Certified True Copy. A Certified True Copy can also be used when the original copy of the document is not available even though the document was executed in Gibraltar.
- (c) Filing Fee £50

Checks To Be Made On Documents Before Delivery To The Registry

- **Time**

- (a) A mortgage or charge is a **TIME CRITICAL DOCUMENT** and this means that it must be registered within a certain period of time.
- (b) The documents must be delivered to the Registry within twenty-one days of the date on the document creating the charge. Where the charge is created outside Gibraltar for the property outside Gibraltar, then the time limit is twenty-one days plus a reasonable time for posting.

- **Documents**

1. Ensure that the details on the form of short particulars are **correct** and correspond to the instrument creating or evidencing the charge.
2. The name and number of a company must be **correct**. The company's name is only changed on the day the change of name certificate is issued by the Registrar.
3. The date of creation and description of the charge must agree with any instrument.
4. The amount secured must accurately reflect what is stated in the instrument.
5. The name of the chargee must correspond to the instrument.
6. The short particulars of the property charged should accurately reflect what is stated in the instrument.
7. For registered land it is desirable that the title number of the property is given. Ensure charging clauses are inserted including reference to fixed and floating charges
8. An instrument does not have to be sealed in order to be a deed. If it purports to be a deed then it will be a valid deed even if it is not sealed, provided that it is signed by a director and the company secretary, or by two directors
9. The form of short particulars must be signed and dated.

- **Signature**

The short particulars must be signed by one of the following:

- (a) An officer of the company.

- (b) The solicitor for the company.
- (c) The solicitor for the chargee (the person who has the benefit of the charge).

Procedure For A Time Critical Document

1. The form of short particulars is stamped with a TIME CRITICAL DOCUMENT stamp as soon as it is delivered to the Registry and a photocopy also so stamped is immediately placed in the company file. A photocopy of the form of short particulars is stamped with the date of entry and returned to the client together with the receipts. When a document is stamped as Time Critical it means it is pending inspection and registration, this alerts the public that a charge has been created by the company.

- **Fee Payable**

£10	filing short particulars.
£10	lodging document creating the charge.
£15	entry in the register of charges.
£15	Certificate of Registration of a charge.

Total: £50

Registration Of The Charge Or Mortgage

Once the details of the Form of short particulars are recorded by the staff at the Registry the charge is registered. The Registry will then produce the following two documents:

1. The certificate of Registration of a charge or mortgage
2. The register of mortgages for the particular company charged. This Register will be in the form set out in Form 128A

It is important to understand Form 128A as this will be the record that will be placed in the Company file and will be the record that a person making a search of the company will find. The front page of Form 128A will list a chronological index of all the charges registered against the company. Form 128A is called as such because it refers to Section 128 of the Companies Act which deals with Registration of Charges.

Collecting The Certificate of Registration Of A Charge From The Registry

The person collecting the certificate will need to produce the photocopy of Form of short particulars that had been originally stamped by the Registry. The person will be given the following documents:

1. Certificate of Registration
2. The original deed delivered to the Registry

What If The Registrar Finds An Error In The Documents Delivered To The Registry? - If the Registrar discovers an error in any of the particulars stated in the Form of short particulars they must be corrected by the presenter within the 21day time limit. There are **no exceptions** to this rule. If the charge is not considered registrable under the Act, the form and instrument are returned to the presenter with a letter of explanation.

How Can A Charge Be Registered? - Only the Court can grant an extension of time for registration of a charge that was not **correctly received** in time i.e. normally within the 21 days from the date of creation of the charge.

What Rights Has The Chargee? - If the company does not submit the charge for registration the chargee, or some other person interested, can register the required documents.

Filing of Memorandum of Satisfaction of a Mortgage or Charge

It is not a statutory requirement for the company to advise the Registrar that a charge has been satisfied in whole or in part. However it is obviously in the company's own interest to acquaint potential investors and lenders to the fact that the debt registered against the public file as a charge has been partly or fully satisfied.

- **Documents To Be Delivered To The Registry**
1. Memorandum of Satisfaction of a Mortgage or Charge - This must be signed by a Director and the Secretary of the Company.
 2. Declaration verifying the Memorandum of Satisfaction of a Mortgage or Charge -This must be signed by a Director and the Secretary of the company before a Commissioner for Oaths.
 3. Written acknowledgment from the chargee that the Mortgage or charge was satisfied in full or in part.

Check To Be Made On Documents Before Delivery To The Registry.

1. Check that the director is in fact a director of the company according to the company records.

2. Check the details in the Memorandum of Satisfaction against the entry on the file on Form 128A
3. Check that the chargee signing the release is in fact the chargee or entitled to sign for the chargee.

- **Fee Payable**

£10 Filing Memorandum of Satisfaction and Declaration verifying the Memorandum.

£10 Release signed by the Chargee.

£15 Certificate of Discharge Under Section 133 of the Companies Act.

Please do not hesitate to contact Companies House if you require further information on these matters.

- **Payment Method**

Payment Method – UK clearing cheques should be crossed and made payable to Companies House (Gibraltar) Limited

- **Guidance Only**

This Circular is intended for general guidance only. Companies House (Gibraltar) Limited does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem we recommend that you seek professional advice.

- **Registry**

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