



# GUIDANCE NOTE 6

## Registration of Mortgages and charges

Companies House Gibraltar has prepared these Guidance Notes to detail what mortgages and charges need to be registered Under Section 168 of the Companies Act 2014. 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; usually 30 days from the creation of the charge.

### ▪ 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 or any other description of property (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 or aircraft.
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 that 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 of 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 that in the ordinary course of a company's business are commonly entered in its books.

**Floating Charge** - a charge that 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 that the company would have had to register if it had created the charge itself, then the company shall send 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 the Registrar for registration within 30 days from the date after the acquisition of the charged property.

#### ▪ **Re-Domiciled Companies**

If a company is re-domiciled into Gibraltar under Part XIII of the Companies Act and the company has an existing charge, then the standard 30-day period allowed for the registration of the charge commences on the day following the date of registration of the company.

#### ▪ **Documents To Be Delivered To The Registry**

The following two documents must be delivered to the Registry:

- (a) **Short** particulars of the charge or mortgage duly completed and signed;
- (b) The document creating or evidencing the charge, that is, 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 may also be used when the original copy of the document is not available even though the document was executed in Gibraltar. The document will be returned to you once the charge is registered.

Please be advised that the liability for the accuracy of the wording in the short particulars of the charge that is delivered to the Registrar lies solely with the person who signs and / or files the said particulars. Under no circumstances is the Registrar of Companies or Companies House Gibraltar to be held liable for any inaccuracies which are later found to exist between the short particulars of the charge or the charging document itself. The sole responsibility of the Registrar of Companies and Companies House Gibraltar is to register the documents that are delivered.

## 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 the period of time set by statute.
- (b) The documents must be delivered to the Registry within thirty days of the date of the document that creates the charge. Where the charge is created outside Gibraltar for property outside Gibraltar, then the time limit is thirty 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 and address of the charge. 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 executed by a company 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).

## ▪ **Fee Payable**

For the Registration of a Mortgage / Charge including prescribed particulars or any other forms of security, Mortgage Instrument and certificate of registration of charge is **£105**

## **Registration Of The Charge Or Mortgage**

After the details in 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 168A.

It is important to understand Form 168A as this is the record that will be placed in the Company file and is the record that a person making a search of the company will find. The front page of Form 168A will list a chronological index of all the charges registered against the company. Form 168A is called as such because it refers to Section 168 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 be given the following documents upon signing a receipt of collection:

1. Certificate of Registration;
2. Form 168A;
3. The original or certified 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 30 day 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.

## How Can a Late Charge Be Registered?

Only the Court can grant an extension of time for registration of a charge that was not **received** within the appointed time i.e. in most circumstances within 30 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 interested person, 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, Notary Public or Justice of the Peace.
3. Written acknowledgment from the chargee that the Mortgage or charge was satisfied in full or in part.

## Checks 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 168A
3. Check that the chargee signing the release is in fact the chargee or entitled to sign for the chargee.

- **Fee Payable**

For the entry of a Memorandum of Satisfaction and Certificate of discharge under section 174 is **£58.50**

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

- **Payment Method**

UK clearing cheques should be made payable to Companies House Gibraltar.

- **Guidance only**

These notes are intended for general guidance only. Companies House Gibraltar 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 Contact Details:**

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