

COMPANIES (REGISTRATION OF
SECURITIES) ACT.

Act No. 37, 1918.

An Act to amend the law relating to companies; to provide for the registration of certain securities; to amend the Companies Act, 1899, the Bills of Sale Act of 1898, and certain other Acts; and for purposes consequent thereon or incidental thereto. [Assented to, 12th December, 1918.] George V,
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BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Companies (Registration of Securities) Act, 1918." It shall be read with the Companies Act, 1899, hereafter referred to as "The Principal Act." Short title.

2. In this Act, unless the context otherwise requires,— Definitions.

"Company" means company formed or registered or deemed to have been formed or registered under Part I of the Principal Act.

"Debenture" includes debenture stock.

"Prescribed" means prescribed by regulations.

3. (1) Every mortgage or charge created after the commencement of this Act by a company and being either— Registration
of mortgages
and charges.
See 8 Ed. VII,
c. 69, s. 93,
and Act No.
26:1 (Vic.)
s. 101.

- (a) a mortgage or charge for the purpose of securing any issue of debentures, not being a specific mortgage or charge over lands duly registered under the provisions of the Real Property Act, 1900, or the Registration of Deeds Acts; or
(b)

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- (b) a mortgage or charge on uncalled or unpaid share capital of the company ; or
- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ; or
- (d) a mortgage or charge on any book debts of the company ; or
- (e) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof accompanied by an affidavit verifying the execution of the mortgage, and in the case of a copy also verifying it as a true copy of such mortgage are filed with the registrar for registration in manner required by this Act within thirty days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured ; and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable :

Provided that—

- (i) in the case of a mortgage or charge created out of New South Wales, thirty 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 New South Wales, shall be substituted for thirty days after the date of the creation of the mortgage or charge, as the time within which the instrument or copy is to be filed with the registrar ; and
- (ii) where the mortgage or charge is created in New South Wales, but comprises property outside that State, the instrument creating or purporting to create the mortgage or charge or a copy thereof, accompanied by a verifying affidavit as aforesaid, may be forwarded for registration notwithstanding that further proceedings may be necessary to make the mortgage

mortgage or charge valid or effectual according to the law of the country, State, or colony in which the property is situate; and

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- (iii) 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 mortgage or charge on those book debts.

(2) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the commencement of this Act, and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) 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 be sufficient if there are delivered to or received by the registrar within thirty 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, or if it or they is or are executed out of New South Wales then within thirty days after the date on which it or they would, in due course of post, if despatched with due diligence, have been received in New South Wales, 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

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Provided that, where more than one issue is made of debentures in the series, there shall be filed with 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.

(4) Where any commission, allowance, or discount has been paid or made either directly or indirectly by the 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 centum of the commission, discount, or allowance so paid or made, but an 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 provision be treated as the issue of the debentures at a discount.

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

(6) The company shall cause a copy of every certificate of registration given under this section 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 mortgage or charge so registered :

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

(7)

(7) It shall be the duty of the company to send to the registrar for registration the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof, accompanied by an affidavit verifying the execution of the mortgage, and in the case of a copy, also verifying it as a true copy of such mortgage, and the particulars of the issues of debentures of a series, requiring registration under this section; but registration of any such mortgage or charge may be effected on the application of any person interested therein.

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Where the 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.

(8) The instruments or copies of instruments creating any mortgage or charge filed with the registrar and the register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

() Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

(10) No mortgage or charge requiring registration under this section or the Principal Act shall require to be filed or registered under the provisions of the Bills of Sale Act of 1898, anything contained in that Act or any Act amending the same to the contrary notwithstanding.

See Act No.
2631 (Vic.),
s. 101 (10).

(11) Where a mortgage requiring registration under this Act is created within or on the expiration of thirty days after the creation of a prior unregistered mortgage, and comprises all or any part of the property comprised in the prior mortgage, and the subsequent mortgage is given as a security for the same debt as is secured by the prior mortgage, or for any part of such debt, then to the extent to which such subsequent mortgage is a security for the same debt or part thereof, and so far as respects the property comprised in the prior

See *Ibid.*
s. 101 (11).

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Registration
of mortgages
and charges
created
before the
commence-
ment of this
Act.

7 Ed. VII,
c. 5), s. 12.

4. (1) Every company shall, within three months after the commencement of this Act, file with the registrar for registration a list of all mortgages and charges created by it before such commencement, which have not been wholly satisfied, and which under the provisions of this Act would have required registration had they been created after such commencement, together with particulars of the date of creation, the amount secured by the mortgage or charge, and short particulars of the property mortgaged or charged, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled to the charge.

The registrar shall, on payment of the prescribed fee, enter such particulars in the register of mortgages and charges kept in pursuance of the provisions of this Act :

Provided that the neglect of the company to comply with the provisions of this section shall not prejudice the rights under any such mortgage or charge of any person in whose favour the mortgage or charge was made.

(2) If any company fail to comply with the provisions of this section, the company and every director, manager, or secretary thereof, or other person who is knowingly a party to the default, shall be liable to a penalty not exceeding fifty pounds for every day during which the default continues.

Registration
of enforce-
ment of
security.
8 Ed. VII,
c. 69, s. 94.
Act No. 2631
(Vic.), s. 102.

5. (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 powers contained in the instrument give notice of the fact to the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2)

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

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6. (1) Every receiver or manager of the property of a company who after the commencement of this Act has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

Filing of
accounts of
receivers and
managers.
s. Ed. VII.
c. 69, s. 95.
Act No. 2631
(Vic.), s. 103.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a penalty not exceeding fifty pounds.

7. A judge, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence 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 judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

Rectification
of register.
Ibid. s. 96.
Ibid. s. 101.

8. The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, enter a memorandum of satisfaction on the register, and shall, on payment of the prescribed fee, furnish the company with a copy thereof.

Entry of
satisfaction.
Ibid. s. 97.
Ibid. s. 105.

9. The registrar shall keep an index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Index to
register.
Ibid. s. 98.
Ibid. s. 106.

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Penalties.
8 Ed. VII,
c. 99.

Act No. 2631
(Vic.), s. 107.

10. (1) If any company makes default in filing with the registrar for registration the instrument (if any) by which any mortgage or charge is created, or the verified copy thereof, or in delivering to the registrar the particulars of the issues of debentures of a series, requiring registration under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a penalty not exceeding fifty pounds for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a penalty not exceeding one hundred pounds.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a penalty not exceeding one hundred pounds.

Company's
register of
mortgages.

Ibid. s. 100.

Ibid. s. 108.

11. (1) Every company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a penalty not exceeding fifty pounds.

12.

12. (1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

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Inspection of copies of instruments, creating mortgages and charges, and company's register of mortgages.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal shall be liable to a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty, any judge, sitting in chambers, may by order compel an immediate inspection of the copies or register.

S. Ed. VII, c. 69, s. 101.
Act No. 2631 (Vic.), s. 109.

13. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

Right of debenture-holders to inspect the register of debenture-holders and to have copies of trust deed.

Ibid. s. 102.
Ibid. s. 110.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a penalty

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Power to
re-issue
redeemed
debentures in
certain cases.

14. (1) Where either before or after the passing of this Act, a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power, the company shall have power, and shall be deemed always to have had power, to re-issue the debentures, either by re-issuing the same debentures, or by issuing other debentures in their place. And upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where, with the object of keeping debentures alive, for the purpose of re-issue, they have, either before or after the passing of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has, either before or after the passing of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to or deemed to have been possessed by a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the
issue

issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

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Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice, or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

Nothing in this section shall prejudice any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures, or the securities for the same.

15. The Governor may make regulations for carrying out the provisions of this Act. Regulations.

Such regulations shall—

- (i) be published in the Gazette ;
- (ii) take effect from the date of publication, or from a later date to be specified in such regulations ; and
- (iii) be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in session, and, if not, then within fourteen days after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect.