



Registration of Charges and their Discharge



Important

This pamphlet is intended to provide a general guide. The Companies Registry and the Registrar of Companies will not be liable for any errors or omissions. Please refer to the Companies Ordinance, Chapter 32, Laws of Hong Kong for the detailed requirements. You can purchase a copy of the Companies Ordinance from the Online Government Bookstore (www.bookstore.gov.hk) or by calling the Publications Sales Section of the Information Services Department at (852) 2537 1910. You can also view the full text of the Ordinance at www.legislation.gov.hk.

1. Who has to register a charge with the Registrar of Companies ?

The provisions of Part III of the Companies Ordinance relating to registration of charges apply to -

- (a) a local company incorporated under the Companies Ordinance
- (b) a non-Hong Kong company registered under Part XI of the Companies Ordinance

2. When do I need to register a charge with the Registrar of Companies ?

When your company creates a charge which is secured on its property or undertaking, or when your company acquires a property on which a charge already exists.

The types of charges which require registration are specified in section 80(2) of the Companies Ordinance.

Generally, the prescribed time period for delivery is 5 weeks after the date of creation of the charge. Charge documents delivered beyond the prescribed time period will not be accepted unless an order extending the time for registration is granted by the court.

3. Who should present a charge for registration ?

It is the duty of the company to register any charge created by it, but others such as the chargee or mortgagee, solicitors or other professionals acting on behalf of the chargor or chargee may also present a charge for registration if they wish.

4. What should I do ?

You should lodge the following documents *within the prescribed time period* at the Companies Registry on the 14th floor of the Queensway Government Offices, 66 Queensway, together with the appropriate fees-

- (a) a properly completed specified form M1 "Mortgage or Charge Details" reporting the particulars of the charge which should accurately summarize the contents of the charge; and
- (b) an original or a certified correct copy (if applicable) of the instrument by which the charge is created or evidenced. Certification of the copy instrument should be made in accordance with Regulation 5 of the Companies (Forms) Regulations.

Documents returned by the Registry for amendments of errors in the particulars completed or in the charge itself should be amended and re-delivered within the prescribed time period. A court order extending the time for registration is required if the documents are filed outside this period.

5. What can I get ?

You will receive a certificate of registration and the original or certified copy of the instrument creating or evidencing the charge with a registration endorsement.

6. How long does it take ?

Normally the certificate of registration will be issued in 9 working days.

7. What is the consequence of failing to deliver a charge for registration after it has been created ?

It is the duty of the company to deliver the charge for registration. If the charge is not registered as required, the company and every officer of the company shall be liable to a default fine. The charge will also be void against the liquidator and creditors of the company.

8. Can the registration of a charge be cancelled after it has been discharged ?

The registration of a charge *cannot* be cancelled. However, the Registrar of Companies (the Registrar) may, on application made by either the company, or the chargee or mortgagee of the charge in the specified form M2 “Memorandum of Satisfaction or Release of Property from Charge”, together with such documentary evidence as may be required, register the form M2.

There is no statutory time limit for submitting a form M2. The company or the chargee or mortgagee can submit a form M2 any time after the charge has been discharged.

9. Do I need to submit the evidence of discharge together with the specified form M2 ?

If the form M2 is signed by the company, it must be accompanied by documentary evidence of the discharge, and, if applicable, documentary evidence of change of chargee or mortgagee. If the form M2 is signed by the chargee or mortgagee, no evidence is required. Please refer to the Notes of Completion of the form M2 for detail.

10. Where can I obtain the specified forms ?

You can download the specified forms at www.cr.gov.hk or purchase hard copies of the specified forms at the 14th floor of the Queensway Government Offices.

11. Where can I ask for further information ?

Please call the Charges & Liquidation Section of the Companies Registry at (852) 2867 2578.

A Check List for Presenting Charge Documents

Before you present the documents, please ensure that you-

- Print the specified form(s) in black ink and comply with the Registrar's *Requirements for Documents Guidelines* with regard to layout, type size and colour of paper, etc. For further information, please refer to the information pamphlet *“Information on Presenting Documents to the Companies Registry”*.
- State correctly the company's registered number, company name and the particulars (including the fax number) of the presenter.
- For registering a charge, file the properly completed and signed specified form M1 together with the original or certified copy of the instrument creating or evidencing the charge where appropriate as early as possible within the *prescribed time period*. The Registrar does not have the power to extend the statutory time limit for the delivery of a charge. *If the due date falls on a Saturday when the Companies Registry's offices are closed, the deadline for submission shall*

remain unchanged. A court order extending the time for registration of a charge under section 86 of the Companies Ordinance will be required for any charge which is delivered to the Registrar for registration beyond the prescribed time period.

- For registering a discharge, file the properly completed and signed specified form M2 together with the original documentary evidence of discharge and change of chargee or mortgagee where appropriate.
- Pay the correct registration fee. For information on the fee structure, please refer to the information pamphlet *“Price Guide to Main Services”*.
- You can download the information pamphlets at www.cr.gov.hk; obtain hard copies at the Companies Registry or by fax through the 24-hour enquiry hotline (IVRS) (852) 2234 9933.