

## PART 8

### REGISTRATION OF CHARGES

#### Division 1 – Preliminary

##### 8.1 Interpretation

- (1) In this Part –
- “charge” (押記) includes mortgage;
- “identity card” (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177).
- (2) For the purposes of this Part –
- (a) if a ship or aircraft of a registered non-Hong Kong company is registered in Hong Kong, it is regarded as property in Hong Kong of the company even though it is physically located outside Hong Kong; and
  - (b) if a ship or aircraft of a registered non-Hong Kong company is registered in a place outside Hong Kong, it is regarded as property outside Hong Kong of the company even though it is physically located in Hong Kong.
- (3) In Divisions 2 and 4, a reference to a person interested in a charge excludes the company or registered non-Hong Kong company creating the charge.
- (4) For the purposes of Divisions 2 and 3, a copy of an instrument in relation to a charge delivered for registration is a certified copy if it is certified as a true copy –
- (a) by –
    - (i) a director or secretary of the company or registered non-Hong Kong company delivering the copy for registration; or

- (ii) a person authorized by that company or non-Hong Kong company for the purpose; or
- (b) by –
  - (i) any other person interested in the charge; or
  - (ii) in the case of –
    - (A) an interested person who is an individual, a person authorized by the interested person for the purpose; or
    - (B) an interested person that is a body corporate, a person authorized by the interested person for the purpose, or a director or secretary of the interested person.

(5) In Division 6, a reference to the charged property of a registered non-Hong Kong company is a reference to –

- (a) the property in Hong Kong of the company and subject to a charge created by the company, except property that was not in Hong Kong when the charge was created; or
- (b) the property in Hong Kong of the company and subject to a charge that subsisted when the property was acquired by the company, except property that was not in Hong Kong when it was so acquired.

## **8.2 Application**

This Part does not apply to a registered non-Hong Kong company –

- (a) that delivers a notice to the Registrar under section 16.21(1) of the fact that it has ceased to have a place of business in Hong Kong; or
- (b) in relation to which the Registrar enters in the Register a statement of dissolution under section 16.22(2).

## **Division 2 – Obligation to Register Specified Charges after Creation**

### **8.3 Specified charge**

(1) In this Division, a reference to a specified charge is a reference to any of the following charges created on or after the commencement of this section –

- (a) a charge on uncalled share capital of the company;
- (b) a charge created or evidenced by an instrument that, if executed by an individual, would require registration as a bill of sale;
- (c) a charge on land (wherever situate) or any interest in land, except a charge for any rent or other periodical sum issuing out of land;
- (d) a charge on book debts of the company;
- (e) a charge on calls made but not paid;
- (f) a charge on instalments due, but not paid, on the issue price of shares;
- (g) a charge on a ship or any share in a ship;
- (h) a charge on an aircraft or any share in an aircraft;
- (i) a charge on –
  - (i) goodwill;
  - (ii) a patent or a licence under a patent;
  - (iii) a trademark; or
  - (iv) a copyright or a licence under a copyright;
- (j) a floating charge on the company's undertaking or property.

(2) For the purposes of subsection (1)(c), the holding of debentures entitling the holder to a charge on land is not regarded as an interest in the land.

(3) For the purposes of subsection (1)(d) –

- (a) the deposit by way of security of a negotiable instrument given to secure the payment of book debts is not regarded as a charge on those book debts; and
- (b) if a company deposits money with another person, a charge on the company's right to enforce repayment of the money is not regarded as a charge on book debts of the company.

(4) For the purposes of subsection (1)(d) and (j), if a company charters a ship from a shipowner, the shipowner's lien on the subfreights for amounts due under the charter is regarded neither as a charge on book debts of the company nor as a floating charge on the company's undertaking or property.

#### **8.4 Company must register specified charge created by it**

(1) A company must deliver a statement of the particulars of every specified charge created by the company, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (5)(a).

(2) Where –

- (a) a specified charge created by a company –
  - (i) is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); or
  - (ii) is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and
- (b) every holder of the debentures of the series is entitled equally to the benefit of the charge,

the company is regarded as having complied with subsection (1) in relation to the specified charge if the company delivers a statement of the particulars of the

charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (5)(b).

- (3) A person interested in a specified charge –
  - (a) may deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (5)(a); or
  - (b) may, in the case of subsection (2), deliver a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (5)(b).
- (4) The instrument is –
  - (a) for the purposes of subsection (2)(a)(i), the instrument by reference to which the specified charge is given; or
  - (b) for the purposes of subsection (2)(a)(ii), any one debenture of the series.
- (5) The registration period is –
  - (a) for the purposes of subsection (1) or (3)(a) –
    - (i) 21 days after the date on which the specified charge is created; or
    - (ii) where the specified charge is created outside Hong Kong and comprising property situate outside Hong Kong, 21 days after the date on which a certified copy of the instrument creating or evidencing that charge could, if despatched with due diligence, have been received in Hong Kong in due course of post; and

- (b) for the purposes of subsection (2) or (3)(b) –
  - (i) 21 days after the execution of the instrument by reference to which the specified charge is given or if there is no such instrument, 21 days after the execution of the first debenture of the series; or
  - (ii) where the specified charge is created outside Hong Kong and comprising property situate outside Hong Kong, 21 days after the date on which a certified copy of the specified instrument could, if despatched with due diligence, have been received in Hong Kong in due course of post.
- (6) A statement of the particulars of a specified charge –
  - (a) must be in the specified form; and
  - (b) must be accompanied by the prescribed fee.
- (7) If a person interested in a specified charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of the charge, the fee is recoverable from the company creating the charge.
- (8) If a specified charge is created in Hong Kong and comprises property situate outside Hong Kong, a certified copy of an instrument creating or purporting to create the charge may be delivered to the Registrar for registration under subsection (1), (2) or (3) even though further proceedings may be necessary to make that charge valid or effectual according to the law of the place in which the property is situate.

#### **8.5 Registered non-Hong Kong company must register specified charge created by it**

- (1) A registered non-Hong Kong company must deliver a statement of the particulars of every specified charge created by the company on property in Hong Kong of the company, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (6)(a).

- (2) Where –
- (a) a specified charge created by a registered non-Hong Kong company on property in Hong Kong of the company –
    - (i) is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); or
    - (ii) is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and
  - (b) every holder of the debentures of the series is entitled equally to the benefit of the charge,

the company is regarded as having complied with subsection (1) in relation to the specified charge if the company delivers a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (6)(b).

- (3) A person interested in a specified charge –
- (a) may deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (6)(a); or
  - (b) may, in the case of subsection (2), deliver a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (6)(b).
- (4) The instrument is –

- (a) for the purposes of subsection (2)(a)(i), the instrument by reference to which the specified charge is given; or
- (b) for the purposes of subsection (2)(a)(ii), any one debenture of the series.

(5) Subsections (1) and (2) do not apply to a charge on property if the property was not in Hong Kong when the charge was created by the registered non-Hong Kong company.

(6) The registration period is –

- (a) for the purposes of subsection (1) or (3)(a), 21 days after the date on which the specified charge is created; and
- (b) for the purposes of subsection (2) or (3)(b) –
  - (i) 21 days after the execution of the instrument by reference to which the specified charge is given; or
  - (ii) if there is no such instrument, 21 days after the execution of the first debenture of the series.

(7) A statement of the particulars of a specified charge –

- (a) must be in the specified form; and
- (b) must be accompanied by the prescribed fee.

(8) If a person interested in a specified charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of the charge, the fee is recoverable from the registered non-Hong Kong company creating the charge.

## **8.6 Consequences of contravention of section 8.4 or 8.5**

(1) This section applies if –

- (a) a company contravenes section 8.4(1) in relation to a specified charge, and a person interested in the charge has not registered the charge under section 8.4(3); or



(b) a registered non-Hong Kong company contravenes section 8.5(1) in relation to a specified charge, and a person interested in the charge has not registered the charge under section 8.5(3).

(2) Subject to section 8.15, the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence.

(3) A person who commits an offence under subsection (2) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

(4) Subject to section 8.15, the specified charge is void against any liquidator and creditor of the company or registered non-Hong Kong company so far as any security on its undertaking or property is conferred by the charge.

(5) Subsection (4) does not prejudice any contract or obligation for repayment of the money secured by the specified charge.

(6) At the lender's option, the money secured by a specified charge becomes immediately payable when the charge becomes void under subsection (4).

### **Division 3 – Obligation to Register Existing Charges**

#### **8.7 Company must register charge existing on property acquired**

(1) This section applies if –

- (a) a company acquires property subject to a charge; and
- (b) the charge is of a kind that a statement of its particulars would have been required by section 8.4(1) to be delivered for registration had it been created by the company after the acquisition.

(2) The company must deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or

evidencing the charge, to the Registrar for registration within the registration period specified in subsection (3).

- (3) The registration period is –
  - (a) 21 days after the date on which the acquisition is completed; or
  - (b) where the property is situate, and the charge was created, outside Hong Kong, 21 days after the date on which a certified copy of the instrument creating or evidencing the charge could, if despatched with due diligence, have been received in Hong Kong in due course of post.
- (4) A statement of the particulars of a charge –
  - (a) must be in the specified form; and
  - (b) must be accompanied by the prescribed fee.

(5) Subject to section 8.15, if a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence.

(6) A person who commits an offence under subsection (5) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

### **8.8 Registered non-Hong Kong company must register charge existing on property acquired**

- (1) This section applies if –
  - (a) a registered non-Hong Kong company acquires property in Hong Kong subject to a charge; and
  - (b) the charge is of a kind that a statement of its particulars would have been required by section 8.5(1) to be delivered for registration had it been created by the registered non-Hong Kong company after the acquisition.

(2) Subsection (1)(a) does not apply to a charge on property if the property was not in Hong Kong when the property was acquired by the registered non-Hong Kong company.

(3) The registered non-Hong Kong company must deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (4).

(4) The registration period is 21 days after the date on which the acquisition is completed.

(5) A statement of the particulars of a charge –

(a) must be in the specified form; and

(b) must be accompanied by the prescribed fee.

(6) Subject to section 8.15, if a registered non-Hong Kong company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.

(7) A person who commits an offence under subsection (6) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

### **8.9 Registered non-Hong Kong company must register charge existing on property on date of company's registration under Part 16**

(1) This section applies if –

(a) a registered non-Hong Kong company has, on the date of its registration under Part 16, property in Hong Kong subject to –

(i) a charge created by the company; or

(ii) a charge that subsisted when the property was acquired; and

(b) the charge is of a kind that a statement of its particulars would have been required by section 8.5(1) or 8.8(3) to be

delivered for registration had the charge been created by the company, or had the property been acquired by the company, after the company has been registered under Part 16.

(2) The registered non-Hong Kong company must deliver a statement of the particulars of the charge, together with a certified copy of the instrument (if any) creating or evidencing the charge, to the Registrar for registration within the registration period specified in subsection (5).

(3) If, in the case of subsection (1)(a)(i) –

(a) the charge –

(i) is given in a debenture forming part of a series by reference to any other instrument containing the charge (whether or not also contained in the debenture); or

(ii) is contained in a debenture forming part of a series (but not given in the debenture by reference to any other instrument); and

(b) every holder of the debentures of the series is entitled equally to the benefit of the charge,

the registered non-Hong Kong company is regarded as having complied with subsection (2) in relation to the charge if that company delivers a statement of the particulars of the charge, together with a certified copy of an instrument specified in subsection (4), to the Registrar for registration within the registration period specified in subsection (5).

(4) The instrument is –

(a) for the purposes of subsection (3)(a)(i), the instrument by reference to which the charge is given; or

(b) for the purposes of subsection (3)(a)(ii), any one debenture of the series.

(5) The registration period is 21 days after the date on which the registered non-Hong Kong company is registered under Part 16.

(6) A statement of the particulars of a charge –

(a) must be in the specified form; and

(b) must be accompanied by the prescribed fee.

(7) Subject to section 8.15, if a registered non-Hong Kong company contravenes subsection (2), the company, and every responsible person of the company, commit an offence.

(8) A person who commits an offence under subsection (7) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

#### **Division 4 – Obligation to Register Other Particulars of Debentures**

##### **8.10 Company or registered non-Hong Kong company must register particulars of issue of debentures**

(1) This section applies if –

(a) a debenture forming part of a series –

(i) contains a charge created by a company or registered non-Hong Kong company; or

(ii) gives a charge created by a company or registered non-Hong Kong company, by reference to any other instrument containing the charge;

(b) every holder of the debentures of the series is entitled equally to the benefit of the charge; and

(c) a statement of the particulars of the charge is delivered for registration under section 8.4(2), 8.5(2) or 8.9(3).

(2) The company or registered non-Hong Kong company must deliver a statement of the particulars of every issue of the debentures of the series to the

Registrar for registration within the registration period specified in subsection (4).

(3) A person interested in the charge may deliver a statement of the particulars of an issue of debentures to the Registrar for registration within the registration period specified in subsection (4).

(4) The registration period is –

(a) if a statement of the particulars of the charge is delivered for registration under section 8.4(2) or 8.5(2) –

(i) in the case of an issue of debentures made at the time of the creation of the charge, the registration period specified in relation to the registration of the charge in section 8.4(5)(b) or 8.5(6)(b); or

(ii) in the case of any subsequent issue of debentures, 21 days after the date of the issue; or

(b) if a statement of the particulars of the charge is delivered for registration under section 8.9(3) –

(i) in the case of an issue of debentures made on or before the registration under Part 16, the registration period specified in relation to the registration of the charge in section 8.9(5); or

(ii) in the case of any subsequent issue of debentures, 21 days after the date of the issue.

(5) A statement of the particulars of an issue of debentures –

(a) must be in the specified form; and

(b) must be accompanied by the prescribed fee.

(6) Without limiting section 2.5, a statement of the particulars of an issue of debentures must contain the date and the amount of the issue.

(7) If a person interested in a charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of an issue of

debentures, the fee is recoverable from the company or registered non-Hong Kong company creating the charge.

(8) Subject to section 8.15, if subsection (2) is contravened, and a person interested in the charge has not delivered a statement of the particulars of the issue of debentures for registration under subsection (3), the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence.

(9) A person who commits an offence under subsection (8) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

(10) A contravention of subsection (2) does not affect the validity of the debentures issued.

(11) In this section, a reference to the time of the creation of a charge is a reference to the time of execution of –

- (a) the instrument by reference to which the charge is given;  
or
- (b) if there is no such instrument, the first debenture of the series.

### **8.11 Company or registered non-Hong Kong company must register particulars of commission etc. in relation to debentures**

(1) This section applies if –

- (a) any commission, allowance or discount has been paid or made, directly or indirectly, by a company or registered non-Hong Kong company to any person in consideration of the person –
  - (i) subscribing or agreeing to subscribe, absolutely or conditionally, for any debenture of the company or registered non-Hong Kong company; or

- (ii) procuring or agreeing to procure absolute or conditional subscriptions for any debenture of the company or registered non-Hong Kong company;
- (b) the debenture –
  - (i) creates or evidences a charge; or
  - (ii) forms part of a series of debentures, and either contains a charge or gives a charge by reference to any other instrument containing a charge;
- (c) the charge is created by the company or registered non-Hong Kong company; and
- (d) a statement of the particulars of the charge is required to be delivered for registration under –
  - (i) section 8.4(1);
  - (ii) section 8.5(1); or
  - (iii) section 8.9(2).

(2) The company or registered non-Hong Kong company must deliver a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(a).

(3) Where –

- (a) in the case of subsection (1)(d)(i), a statement of the particulars of the charge is delivered for registration under section 8.4(2); or
- (b) in the case of subsection (1)(d)(ii), a statement of the particulars of the charge is delivered for registration under section 8.5(2),

the company or registered non-Hong Kong company is regarded as having complied with subsection (2) if it delivers a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(b).



(4) Where, in the case of subsection (1)(d)(iii), a statement of the particulars of the charge is delivered for registration under section 8.9(3), the registered non-Hong Kong company is regarded as having complied with subsection (2) if it delivers a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(c).

(5) A person interested in the charge –

(a) may deliver a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(a); or

(b) may, in the case of subsection (3), deliver a statement of the particulars of the commission, allowance or discount to the Registrar for registration within the registration period specified in subsection (6)(b).

(6) The registration period is –

(a) for the purposes of subsection (2) or (5)(a) –

(i) in the case of subsection (1)(d)(i), the registration period specified in relation to the registration of the charge in section 8.4(5)(a);

(ii) in the case of subsection (1)(d)(ii), the registration period specified in relation to the registration of the charge in section 8.5(6)(a); or

(iii) in the case of subsection (1)(d)(iii), the registration period specified in relation to the registration of the charge in section 8.9(5);

(b) for the purposes of subsection (3) or (5)(b) –

(i) in the case of an issue of debentures made at the time of the creation of the charge, the registration

- period specified in relation to the registration of that charge in section 8.4(5)(b) or 8.5(6)(b); or
- (ii) in the case of any subsequent issue of debentures, 21 days after the date of the issue; or
- (c) for the purposes of subsection (4) –
    - (i) in the case of an issue of debentures made on or before the registration under Part 16, the registration period specified in relation to the registration of that charge in section 8.9(5); or
    - (ii) in the case of any subsequent issue of debentures, 21 days after the date of the issue.
- (7) A statement of the particulars of any commission, allowance or discount –
- (a) must be in the specified form; and
  - (b) must be accompanied by the prescribed fee.
- (8) If a person interested in the charge pays to the Registrar any prescribed fee for the registration of a statement of the particulars of the commission, allowance or discount, the fee is recoverable from the company or registered non-Hong Kong company creating the charge.
- (9) For the purposes of this section, the deposit of any debenture as security for any debt of a company or registered non-Hong Kong company is not regarded as an issue of debentures at a discount.
- (10) In this section, a reference to the time of the creation of a charge is a reference to the time of execution of –
- (a) the instrument by reference to which the charge is given; or
  - (b) if there is no such instrument, the first debenture of the series.

## **8.12 Consequences of contravention of section 8.11**

(1) Subject to section 8.15, if section 8.11(2) is contravened, and a person interested in the charge has not delivered a statement of the particulars of the commission, allowance or discount (as the case may be) for registration under section 8.11(5), the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence.

(2) A person who commits an offence under subsection (1) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

(3) A contravention of section 8.11(2) does not affect the validity of the debentures issued.

### **Division 5 – Supplementary Provisions to Divisions 2, 3 and 4**

## **8.13 Registrar must acknowledge receipt of documents delivered for registration**

(1) This section applies if a statement of the particulars of a charge, and the requisite accompanying instrument, are delivered by a company or registered non-Hong Kong company, or by a person interested in the charge, to the Registrar for registration under Division 2 or 3.

(2) The Registrar must issue a receipt to the company or registered non-Hong Kong company, or to the interested person, acknowledging that the statement, and the requisite accompanying instrument, were delivered to the Registrar for registration under Division 2 or 3 on the date specified in the receipt.

## **8.14 Notification to Registrar of payment of debt, release, etc.**

(1) This section applies if –

- (a) the debt secured by a registered charge has been paid or satisfied in whole or in part; or
- (b) the whole or any part of the property or undertaking subject to a registered charge –
  - (i) has been released from the charge; or
  - (ii) has ceased to form part of the company's or registered non-Hong Kong company's property or undertaking.

(2) The company or registered non-Hong Kong company, or the mortgagee or person entitled to the charge, may notify the Registrar of the payment, satisfaction, release or cessation.

(3) A notification –

- (a) must be in the specified form;
- (b) must be accompanied by the prescribed fee; and
- (c) must be accompanied by a certified copy of any instrument required by the Registrar for the purpose of evidencing the payment, satisfaction, release or cessation.

(4) If the Registrar is satisfied from the instrument accompanying a notification that the payment, satisfaction, release or cessation did take place, the Registrar must process the notification, and the accompanying instrument, in the same way as if they were delivered to the Registrar for registration.

(5) For the purposes of this section, a copy of an instrument is a certified copy if it is certified as a true copy by –

- (a) the mortgagee or the person entitled to the charge; or
- (b) in the case of –
  - (i) a mortgagee or entitled person who is an individual, a person authorized by the mortgagee or entitled person for the purpose; or
  - (ii) a mortgagee or entitled person that is a body corporate –

- (A) a person authorized by the mortgagee or entitled person for the purpose; or
  - (B) a director or secretary of the mortgagee or entitled person.
- (6) For the purposes of this section, a charge is a registered charge if –
  - (a) a statement of the particulars of the charge, and the requisite accompanying instrument, are delivered to the Registrar for registration under Division 2 or 3; and
  - (b) the Registrar records the information contained in the statement, and in that instrument, for the purposes of section 2.8(1).

### **8.15 Extension of time for registration and rectification of registered particulars**

- (1) The Court of First Instance may, on application by the company or registered non-Hong Kong company or by a person interested in the charge, order that –
  - (a) the registration period specified in section 8.4(5), 8.5(6), 8.7(3), 8.8(4), 8.9(5), 8.10(4) or 8.11(6) in relation to a charge or debenture be extended; or
  - (b) an omission or mis-statement of any particular in any of the following be rectified –
    - (i) a statement of the particulars of a charge, or any accompanying instrument, delivered for registration under Division 2 or 3;
    - (ii) a statement of the particulars of an issue of debentures, or a statement of the particulars of commission, allowance or discount, delivered for registration under Division 4;
    - (iii) a notification, or any accompanying instrument, under section 8.14.

(2) The Court of First Instance may make an order under subsection (1) on any terms and conditions that the Court thinks just and expedient.

(3) The Court of First Instance must not make an order unless the Court is satisfied that –

(a) the failure to deliver a statement mentioned in subsection (1)(b)(i) or (ii), or any accompanying instrument, within that registration period, or the omission or mis-statement –

(i) was accidental;

(ii) was due to inadvertence or to some other sufficient cause; or

(iii) is not of a nature to prejudice the position of creditors or members of the company or registered non-Hong Kong company; or

(b) it is just and equitable to grant the relief on other grounds.

(4) The Court of First Instance may make an order to rectify an omission or mis-statement of any particular in any accompanying instrument mentioned in subsection (1)(b)(i) or (iii) to the extent as permitted by common law rules and equitable principles.

Note: Rectification may be ordered if there is strong and convincing evidence that the instrument failed accurately to record the intention of the parties.

(5) If the Court of First Instance makes an order extending a registration period, any liability already incurred for an offence under section 8.6(2), 8.7(5), 8.8(6), 8.9(7), 8.10(8) or 8.12(1) in relation to the registration of the charge or debenture is extinguished, unless the Court directs otherwise.

## **Division 6 – Notice to Registrar of Enforcement of Security**

### **8.16 Notice of appointment of receiver or manager**

(1) If a person obtains an order for the appointment of a receiver or manager of the property of a company or the charged property of a registered

non-Hong Kong company, or appoints such a receiver or manager under the powers contained in an instrument, the person must, within 7 days after the date of the order or of the appointment under those powers, deliver a statement of that fact to the Registrar for registration.

(2) A statement under subsection (1) must include –

(a) the name and address of the person appointed as receiver or manager; and

(b) the number of that person's identity card, or if that person does not have an identity card, the number and issuing country of any passport held by that person.

(3) A statement under subsection (1) must be accompanied by the prescribed fee.

(4) If a person whose particulars are required to be included in a statement delivered to the Registrar under subsection (1) ceases to act as receiver or manager, the person must, within 7 days after the date of the cessation, deliver a statement of the cessation to the Registrar for registration.

(5) If there is any change to the particulars of a person included in a statement delivered to the Registrar under subsection (1), the person must, within 14 days after the date of the change, deliver a statement of that change to the Registrar for registration unless the person has ceased to act as receiver or manager and has delivered a statement of the cessation to the Registrar under subsection (4).

(6) A statement under subsection (1), (4) or (5) must be in the specified form.

(7) If a person contravenes subsection (1), (4) or (5), the person commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

(8) In this section –

“manager” (管理人) excludes a special manager of the estate or business of a company or registered non-Hong Kong company appointed under section 216 of the Companies (Winding Up Provisions) Ordinance (Cap. 32).<sup>1</sup>

### **8.17 Notice of mortgagee entering into possession of property**

(1) If a person enters into possession of the property of a company, or the charged property of a registered non-Hong Kong company, as mortgagee, the person must, within 7 days after the date of entering into possession, deliver a statement of that fact to the Registrar for registration.

(2) A statement under subsection (1) must include –

(a) if the person is an individual –

(i) the person’s name and address; and

(ii) the number of the person’s identity card, or if the person does not have an identity card, the number and issuing country of any passport held by the person; or

(b) if the person is a body corporate, its name and the address of its registered or principal office.

(3) A statement under subsection (1) must be accompanied by the prescribed fee.

(4) If a person whose particulars are required to be included in a statement delivered to the Registrar under subsection (1) goes out of possession of the property or charged property, the person must, within 7 days after going out of possession, deliver a statement of that fact to the Registrar for registration.

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<sup>1</sup> Provisional title of Cap. 32 after it is consequentially amended by the new Companies Ordinance. It is subject to change.



(5) If there is any change to the particulars of a person included in a statement delivered to the Registrar under subsection (1), the person must, within 14 days after the date of the change, deliver a statement of that change to the Registrar for registration unless the person has gone out of possession of the property or charged property and has delivered a statement of that fact to the Registrar under subsection (4).

(6) A statement under subsection (1), (4) or (5) must be in the specified form.

(7) If a person contravenes subsection (1), (4) or (5), the person commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

## **Division 7 – Company’s and Registered Non-Hong Kong Company’s Records and Register of Charges**

### **8.18 Obligation to keep copies of instruments creating charges**

(1) A company must keep at its registered office, or at a place prescribed by regulations made under section 12.125 –

- (a) a copy of every instrument creating a charge requiring registration under this Part; and
- (b) a copy of every instrument creating a charge requiring registration under Part III of the predecessor Ordinance.

(2) A registered non-Hong Kong company must keep at its principal place of business in Hong Kong, or at a place prescribed by regulations made under section 8.23 –

- (a) a copy of every instrument creating a charge requiring registration under this Part; and
- (b) a copy of every instrument creating a charge requiring registration under Part III of the predecessor Ordinance.

- (3) Where –
- (a) a series of debentures is issued by a company or registered non-Hong Kong company;
  - (b) the debentures contain a charge requiring registration under this Part or under Part III of the predecessor Ordinance; and
  - (c) the terms of the debentures are the same,

the company or registered non-Hong Kong company is regarded as having complied with subsection (1) or (2) in relation to the debentures if it keeps a copy of one of the debentures in accordance with that subsection.

- (4) A company or registered non-Hong Kong company must –
- (a) within 14 days after a copy of an instrument mentioned in subsection (1) or (2) is first kept at a place, notify the Registrar of the place; and
  - (b) within 14 days after there is a change in the place where a copy of such an instrument is kept, notify the Registrar of the change.

(5) A notification under subsection (4)(a) or (b) must be in the specified form.

(6) Subsection (4)(a) does not require a company or registered non-Hong Kong company to notify the Registrar of the place where a copy of an instrument is kept if –

- (a) the copy has been kept at the company's registered office, or the registered non-Hong Kong company's principal place of business in Hong Kong, at all times since it came into existence; or
- (b) the copy was in existence on 31 August 1984 and has been kept at that registered office or principal place of business at all times since then.

(7) If subsection (1), (2) or (4) is contravened, the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

### **8.19 Obligation of company to keep register of charges**

(1) A company must keep a register of charges and enter in the register –

- (a) every charge specifically affecting property of the company; and
- (b) every floating charge on the whole or part of the company's property or undertaking.

(2) A register of charges must be kept under subsection (1) –

- (a) at the company's registered office; or
- (b) at a place prescribed by regulations made under section 12.125.

(3) An entry for a charge under subsection (1) must give –

- (a) the amount secured by the charge;
- (b) a description of the property charged; and
- (c) except in the case of securities to bearer, the names of the persons entitled to the charge.

(4) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

(5) If an officer of the company knowingly and wilfully authorizes or permits the omission of an entry required to be made under subsection (1), the officer commits an offence and is liable to a fine at level 5.

## **8.20 Obligation of registered non-Hong Kong company to keep register of charges**

(1) A registered non-Hong Kong company must keep a register of charges and enter in the register –

- (a) every charge created by the company on property in Hong Kong of the company; and
- (b) every charge on property in Hong Kong that is acquired by the company.

(2) Subsection (1) does not apply to a charge on property if the property was not in Hong Kong when the charge was created by, or the property was acquired by, the registered non-Hong Kong company.

(3) A register of charges must be kept under subsection (1) –

- (a) at the registered non-Hong Kong company's principal place of business in Hong Kong; or
- (b) at a place prescribed by regulations made under section 8.23.

(4) An entry for a charge under subsection (1) must give –

- (a) the amount secured by the charge;
- (b) a description of the property charged; and
- (c) except in the case of securities to bearer, the names of the persons entitled to the charge.

(5) If a registered non-Hong Kong company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

(6) If an officer of the registered non-Hong Kong company knowingly and wilfully authorizes or permits the omission of an entry required to be made under subsection (1), the officer commits an offence and is liable to a fine at level 5.

### **8.21 Notification of place where register of charges is kept**

- (1) A company or registered non-Hong Kong company must –
  - (a) within 14 days after a register of charges is first kept at a place, notify the Registrar of the place; and
  - (b) within 14 days after there is a change in the place where the register is kept, notify the Registrar of the change.

(2) A notification under subsection (1)(a) or (b) must be in the specified form.

(3) Subsection (1)(a) does not require a company or registered non-Hong Kong company to notify the Registrar of the place where the register of charges is kept if –

- (a) the register has been kept at the company's registered office, or the registered non-Hong Kong company's principal place of business in Hong Kong, at all times since it came into existence; or
- (b) the register was in existence on 31 August 1984 and has been kept at that registered office or principal place of business at all times since then.

(4) If subsection (1) is contravened, the company or registered non-Hong Kong company, and every responsible person of the company or non-Hong Kong company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

### **8.22 Instruments and register open to public inspection**

- (1) A member or creditor of a company may inspect, without charge –
  - (a) the copies kept by the company under section 8.18(1); and
  - (b) the register of charges kept by the company under section 8.19(1).

- (2) A member or creditor of a registered non-Hong Kong company may inspect, without charge –
- (a) the copies kept by the company under section 8.18(2); and
  - (b) the register of charges kept by the company under section 8.20(1).
- (3) Any other person may inspect, on payment of a prescribed fee –
- (a) the copies kept by a company or registered non-Hong Kong company under section 8.18(1)(a) or (2)(a); and
  - (b) the register of charges kept by a company or registered non-Hong Kong company under section 8.19(1) or 8.20(1).

**8.23 Financial Secretary may make regulations for purposes of this Division**

- (1) The Financial Secretary may make regulations to –
- (a) prescribe a place at which –
    - (i) copies of instruments creating charges are to be kept by a registered non-Hong Kong company under section 8.18; or
    - (ii) a register of charges is to be kept by a registered non-Hong Kong company under section 8.20;
  - (b) provide for the obligations of a registered non-Hong Kong company to keep the copies and the register available for inspection under section 8.22(2);
  - (c) prescribe the fees for the purposes of section 8.22(3); and
  - (d) prescribe any other thing that is required or permitted to be prescribed under this Division in respect of those copies and that register.
- (2) Regulations made under subsection (1)(a) may –
- (a) prescribe a place other than the registered non-Hong Kong company's principal place of business in Hong Kong;
  - (b) prescribe a place –

- (i) by reference to the place at which the registered non-Hong Kong company keeps any other records;  
or
    - (ii) in any other way;
  - (c) provide that section 8.18 or 8.20 is not complied with by keeping the copies, or the register of charges, at a place prescribed in the regulations unless conditions prescribed in the regulations are met;
  - (d) prescribe more than one place for the purpose specified in subsection (1)(a)(i) or (ii); and
  - (e) provide that section 8.18 or 8.20 is not complied with by keeping the copies, or the register of charges, at a place prescribed in the regulations unless both the copies and the register of charges of a registered non-Hong Kong company are kept there.
- (3) Regulations made under subsection (1)(b) may –
  - (a) make provision as to the time, duration and manner of inspection; and
  - (b) define what may be required of the registered non-Hong Kong company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection.
- (4) Regulations made under subsection (1) may provide that –
  - (a) if a registered non-Hong Kong company contravenes any of the regulations, an offence is committed by –
    - (i) the company; and
    - (ii) every responsible person of the company;
  - (b) a person who commits an offence mentioned in paragraph (a) is liable to a fine not exceeding level 5 and, in the case

- of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues;
- (c) the Court of First Instance may, in prescribed circumstances, by order compel an immediate inspection of the copies and the register of charges;
  - (d) if the copies, or the register of charges, are kept at the office of a person other than the registered non-Hong Kong company concerned, an order mentioned in paragraph (c) may be made against that other person and that other person's officers and other employees; and
  - (e) the Court of First Instance must not make an order mentioned in paragraph (c) if it is satisfied that the rights of inspecting the copies, or the register of charges, are being abused.

(5) Nothing in any provision of this Ordinance or in the regulations made under this section is to be construed as preventing a registered non-Hong Kong company –

- (a) from providing more extensive facilities than are required by the regulations; or
- (b) if a fee may be charged, from charging a lesser fee than that prescribed or none at all.