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# REGISTRATION OF CHARGES

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## PREAMBLE

1. In Chapter 6 of the *Report of the Steering Committee for Review of the Companies Act*, the SC had reviewed the following issues relating to registration of charges:

- conceptual issues in registration of charges; and
- operational issues in registration of charges.

## SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSES

### I. CONCEPTUAL ISSUES IN REGISTRATION OF CHARGES

#### Recommendation 6.1

The current framework for registration of charges should be maintained but the list of registrable charges at section 131(3) should be reviewed and updated.

#### Summary of Feedback Received

2. All respondents agreed with this recommendation. Some respondents suggested specific amendments to be made to the list of registrable charges.

#### MOF's Response

3. **MOF accepts Recommendation 6.1.** MOF shares the views of the SC that the current system works and should be maintained. The specific suggestions made by respondents will be considered when the list of registrable charges is reviewed during drafting of the Bill.

### II. OPERATIONAL ISSUES IN REGISTRATION OF CHARGES

#### Recommendation 6.2

Section 132 should be broadened to provide for the registration of charges in the name of a business entity, rather than just in an individual's or company's name.

#### Summary of Feedback Received

4. All respondents agreed with this recommendation. A few respondents indicated that the scope of registration of charges should not be expanded to require registration of charges created by a business entity other than a company or registered branch of a foreign company

#### MOF's Response

5. **MOF accepts Recommendation 6.2.** Currently, only companies or individuals can be reflected as a chargee (i.e. lender). This recommendation will allow a business entity to be reflected as a chargee. MOF agrees with the feedback that the scope of registration of charges should not extend beyond companies and foreign companies.

#### Recommendation 6.3

The current requirements for satisfaction of a charge should be maintained.

#### Summary of Feedback Received

6. All respondents agreed with this recommendation.

MOF's Response

7. **MOF accepts Recommendation 6.3.** MOF shares the views of the SC that the current requirements should be maintained to avoid any potential abuse by the chargor (i.e. borrower).

Recommendation 6.4

Section 138(1) of the Companies Act should be amended to specify that an instrument should be kept for as long as the charge is in force.

Recommendation 6.5

Upon discharge of the charge, the instrument by which the charge is created should be retained on the basis that it forms part of the accounting and other records required to be kept under and for the purposes of section 199 of the Act.

Summary of Feedback Received

8. All respondents agreed with these recommendations.

MOF's Response

9. **MOF accepts Recommendations 6.4 and 6.5.** Currently, section 138(1) of the Act provides that a company must keep the instrument of charge at its registered office. MOF shares the views of the SC that a company should keep the instrument of charge at its registered office for as long as it is in force, and that the retention period for the instrument of charge should be consistent with the requirements of section 199 of the Act.

Recommendation 6.6

There should be a review of ACRA's form for registration of charges in which a confirmation is required by the chargee (if the charge is registered with ACRA by the chargee) that the instrument is kept at the company's registered office.

Recommendation 6.7

A reminder of the chargor's responsibility to keep a copy of the charge at the registered office should be included in the e-notification confirming registration.

Summary of Feedback Received

10. All respondents agreed with these recommendations. One respondent said that the Act should specify the responsibilities of the chargor to register the charge and retain a copy of the charge instrument at its registered office.

MOF's Response

11. **MOF accepts Recommendations 6.6 and 6.7.** MOF shares the views of the SC that the form for registration of charges should be reviewed and that the chargor should be reminded to keep a copy of the charge instrument at its registered office in the e-notification. The responsibilities of a chargor are already specified in sections 132 and 138 of the Act. Section 132(1) provides that in the event of failure to register a registrable charge, the company and every officer in default shall be guilty of an offence. Section 138(1) provides that every company shall cause the instrument creating any registrable charge or a copy thereof to be kept at the registered office.

Recommendation 6.8

The registration of charges regime should continue to apply only to foreign companies registered under the Companies Act and should not be extended to unregistered foreign entities.

Summary of Feedback Received

12. All respondents agreed with this recommendation. One respondent suggested that section 141<sup>1</sup> should be amended to make it clear that it excludes unregistered foreign companies. Another respondent suggested that it should be clarified that if a foreign company, having created a charge which was unregistrable at the point of its creation, is subsequently registered with ACRA as a foreign company, and prior to such registration, had failed to register the charge within 30 days as set out in section 133<sup>2</sup>, the validity of the charge is not affected by the non-registration and the sanction is only penal.

#### MOF's Response

13. **MOF accepts Recommendation 6.8.** MOF agrees with the views of the SC that unregistered foreign companies should not be allowed to register charges with ACRA. As part of the drafting process, MOF will consider whether section 141 should be amended to make this clearer. MOF thinks that there is no need to amend section 133, to make the clarification required. Section 133 deals with registration of charges in specific situations. For foreign companies which become registered in Singapore, section 133 requires that they lodge a statement of any registrable pre-existing charge<sup>3</sup> within 30 days of registration as a foreign company. There is no doubt that the sanction for non compliance with section 133 by foreign companies is only penal and does not affect the validity of the charge.<sup>4</sup>

#### Recommendation 6.9

Maintain ACRA's current practice/position that the mere physical lodgment of charge documents with ACRA does not equate with successful registration of the charge and that the lodgment of the charge documents must be made through BizFile.

#### Summary of Feedback Received

14. All respondents agreed with this recommendation. Two respondents suggested amending the Act to clarify the position. One respondent suggested reducing the particulars required for registration of charges. The respondent pointed out that some chargees are reluctant to register charges as they are unable to confirm that the charge instrument will be kept at the chargor's office.

#### MOF's Response

15. **MOF accepts Recommendation 6.9.** MOF agrees with the SC's views that physical delivery of documents does not amount to lodgment and therefore does not equate to a successful registration of a charge. As indicated under Recommendation 6.8, MOF will consider whether it is necessary to amend section 141. Although the SC did not recommend any reduction in the particulars required for registration of charges, in view of the feedback, ACRA will review the design of the form to ensure the information required continues to be relevant and useful. The comment that some chargees are reluctant to register charges due to the requirement to confirm that the charge will be kept at the chargor's office will be addressed by the implementation of Recommendation 6.6.

### CONCLUSION

16. The following table summarises MOF's decision on the recommendations in Chapter 6 of the *Report of the Steering Committee for Review of the Companies Act*.

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<sup>1</sup> Section 141 states "A reference in this Division to a company shall be read as including a reference to a foreign company registered under Division 2 of Part XI, but nothing in this Division applies to a charge on property outside Singapore of such foreign company."

<sup>2</sup> Section 133 requires companies to register pre-existing charges on a property acquired and the duty upon registration of a foreign company to register pre-existing charges.

<sup>3</sup> A pre-existing charge would be registrable if at the time when the charge was created by the foreign company, the charge was one that an existing registered foreign company would have been required to register.

<sup>4</sup> Section 131(1) renders a charge void against the liquidator and any creditor of the company if the section 131 requirement to register is not complied with. However it is stated at section 131 that this consequence applies only to a charge to which section 131 itself applies.

<b>Classification</b>	<b>No. of Recommendations</b>	<b>Recommendation Reference</b>
Accepted by MOF	9	-