

who was a member of the interest group did not sign the resolution in respect of the shares registered in that shareholder's name and having the same beneficial owner,

such shareholder shall be entitled to require the company to purchase those shares in accordance with section 94.

**101.** The taking of any action by a company affecting the rights attached to shares shall not be invalid by reason only that the action was not approved under section 99.

Action not invalid.

## PART VI

### REGISTRATION OF CHARGES

#### REGISTRATION OF CHARGES WITH REGISTRAR

**102.** (1) Where a company creates a charge to which this section applies, it shall be the duty of the company within the time specified in subsection (3), to cause a copy of the instrument by which the charge is created or evidenced, to be delivered to the Registrar for registration under this Act. The copy of the instrument shall be accompanied by a certificate in the prescribed form issued by a director or secretary of the company or an attorney-at law, verifying the copy as a true copy and containing the prescribed particulars of the charge.

Registration of charges created by companies registered in Sri Lanka.

(2) This section shall apply to the following charges :—

- (a) a charge for the purpose of securing any issue of debentures ;
- (b) a charge on uncalled share capital of the company ;
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ;

- (d) a charge on land wherever situated, or on any interest in land ;
- (e) a charge on book debts of the company ;
- (f) a floating charge on the undertaking or property of the company ;
- (g) a charge on calls made but not paid ;
- (h) a charge on a ship or aircraft or any share in a ship or aircraft ;
- (i) a charge on goodwill or intellectual property within the meaning of the Intellectual Property Act, No. 36 of 2003 ; and
- (j) a trust receipt to which section 4 of the Trust Receipts Ordinance (Cap. 86) applies or an inland trust receipt within the meaning of the Inland Trust Receipts Act, No. 14 of 1990.

(3) An instrument which is required to be registered under this section shall—

- (a) in the case of instruments executed in Sri Lanka, be registered within twenty - one working days of the date of execution of the instrument ; or
- (b) in the case of an instrument executed outside Sri Lanka, be registered within three months of the date of execution of the instrument.

(4) Where a charge is created in Sri Lanka but comprises of property outside Sri Lanka, the instrument creating or purporting to create the charge may be sent for registration under the provisions of this section, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(5) 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 charge on those book debts.

(6) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section, be treated as an interest in land.

(7) Where a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holder of that series are entitled *pari passu* is created by a company, it shall for the purposes of this section be sufficient if, within fifteen working days from the date of execution of the deed containing the charge or if there is no such deed, from the date of execution of any debentures of the series, the following particulars :—

- (a) the total amount secured by the whole series ;
- (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 ;
- (c) a general description of the property charged ; and
- (d) the names of the trustees, if any, for the debenture holders,

together with a copy of the deed containing the charge verified in the prescribed manner, or if there is no such deed, one of the debentures of the series, are delivered to or received by the Registrar :

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue. An omission to send such particulars shall not affect the validity of the debentures issued.

(8) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person, in consideration of his—

- (a) subscribing or agreeing to subscribe whether absolutely or conditionally, for any debentures of the company ; or
- (b) procuring or agreeing to procure subscriptions whether absolute or conditional, for any such debentures,

the particulars required to be sent for registration under the provisions of this section shall include particulars as to the amount or rate *per centum* of the commission, discount or allowance so paid or made. An omission to send such particulars shall not affect the validity of the debentures issued.

(9) The deposit of any debentures as security for any debt of the company shall not for the purposes of subsection (8), be treated as the issue of the debentures at a discount.

(10) Registration of a charge under this section may be effected on the application of any person interested in it. Where registration is effected on the application of a person other than the company, that person shall be entitled to recover from the company the amount of any fees paid by him to the Registrar.

(11) Where any company fails to send to the Registrar for registration the particulars of any charge created by the company or of the issue of debentures of a series which requires registration under this section, then, unless the registration has been affected on the application of some other person—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and

- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(12) The provisions of this section shall be in addition to and not in substitution of any other written law relating to the registration of any document or instrument creating or purporting to create a charge on any property, whether movable or immovable.

(13) For the purpose of this Part of this Act, “charge” includes a mortgage.

**103.** (1) Subject to the provisions of this Part, every charge shall in so far as it confers any security on the company’s property or undertaking, be void against the liquidator and any creditor of the company, unless it is registered in the manner and within the time prescribed by section 102 of this Act or by section 91 of the Companies Act, No. 17 of 1982, as the case may be, or if the time for registration has been extended under section 108 of this Act, or under section 97 the Companies Act, No. 17 of 1982, then within such extended time.

Unregistered charges void in certain cases.

(2) Nothing in this section shall affect any contract or obligation for repayment of money secured by a charge. If a charge becomes void under this section, the money which it secures shall immediately become payable.

(3) For the purpose of this section “charge” means a charge created on or after July 2, 1982, which was required to be registered under section 91 of the Companies Act, No. 17 of 1982 or under section 102 of this Act.

**104.** (1) Where a company registered in Sri Lanka acquires any property which is subject to a charge that would, if it had been created by the company after the acquisition of the property, have been required to be registered under this

Duty of company to register charges existing on property acquired.

Part, the company shall, within the time specified by subsection (2), deliver to the Registrar for registration—

- (a) the prescribed particulars of the charge ; and
- (b) 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.

(2) Particulars of a charge which is required to be registered under subsection (1) shall be delivered to the Registrar—

- (a) if the property is situated and the charge was created outside Sri Lanka, within three months of the date on which the acquisition is completed ; or
- (b) in all other cases within twenty-one working days of the date on which the acquisition is completed.

(3) Where a company fails to comply with this section—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Register of  
charges to be  
kept by  
Registrar.

**105.** (1) The Registrar shall keep with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part, and shall on payment of the prescribed fee enter in the register with respect to such charges, the following particulars :—

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, the particulars specified in subsection (8) of section 102 ;

(b) in the case of any other charge—

- (i) if it is a charge created by the company, the date of its creation, and if it is a charge which was existing on property acquired by the company, the date of the acquisition of the property ;
- (ii) the amount secured by the charge ;
- (iii) short particulars of the property charged ;
- (iv) the persons entitled to the charge.

(2) The Registrar shall issue a certificate in the prescribed form, of the registration of any charge registered under this Part stating the amount secured by it. The certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) Registration of a charge under this Part shall constitute notice to all persons of the particulars of the charge entered on the register of charges under this section, but not of the contents of the instrument which creates or is evidence of the charge.

**106.** (1) The company shall cause a copy of every certificate of registration given under provision of section 105 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 charge so registered.

Endorsement of  
certificate of  
registration on  
debentures.

(2) Nothing in subsection (1) shall be construed as requiring a company to cause a certificate of registration of any charge to be endorsed on any debenture or certificate of debenture stock issued by the company, before the charge was created.

(3) Where any person knowingly and willfully authorises or permits the delivery of any debenture or certificate of debenture stock, which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall without prejudice to any other liability, be guilty of an offence and liable on conviction to a fine not exceeding two hundred thousand rupees.

Entries of satisfaction and release.

**107.** Where the Registrar is satisfied that—

- (a) the debt for which any registered charge was given has been paid or satisfied in whole or in part ; or
- (b) any part of the property or undertaking charged has been released from the charge or has ceased to form part of a company's property or undertaking,

he may enter on the register a memorandum of satisfaction in whole or in part or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be.

Rectification of register of charges.

**108.** If the court is satisfied that—

- (a) the omission to register a charge within the time required by this Act ; or
- (b) the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction,

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 it is otherwise just and equitable to grant relief, the court may on the application of the company or any person interested and on



such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or that the omission or misstatement shall be rectified, as the case may be.

PROVISIONS AS TO COMPANY'S REGISTER OF CHARGES AND AS TO  
COPIES OF INSTRUMENTS CREATING CHARGES

**109.** Every company shall keep a copy of every instrument creating any charge requiring registration under this Part at its registered office or at such other place as may be notified to the Registrar under section 116. In the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Copies of instruments creating charges to be kept by company.

**110.** (1) Every limited company shall—

Company's register of charges.

- (a) keep at its registered office or at such other place as may be notified to the Registrar under section 116, a register of charges ; and
- (b) enter in that register all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, specifying in each case —
  - (i) a short description of the property charged ;
  - (ii) the amount of the charge ;
  - (iii) except in the case of securities to bearer, the names of the persons entitled to the charge.

(2) Any officer of the company who knowingly and willfully authorises or permits the omission of any entry required to be made under the provisions of this section, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

## REVIEW OF REGISTER OF CHARGES

Review of  
Register of  
charges.

**111.** (1) The Registrar may from time to time by notice in writing issued to a company, require that company to deliver to him within fifteen working days of the receipt of such notice—

- (a) the particulars required to be provided under section 102 in respect of all charges which have been registered under this Part or under Part III of the Companies Act, No. 17 of 1982 or Part III of the Companies Ordinance (Cap. 145), in relation to the property or undertaking of the company, and which have not been satisfied in whole or otherwise ceased to apply to any property of the company ;
- (b) a certified copy of the instrument, if any, by which each such charge is created or evidenced ;
- (c) a copy of the certificate issued by the Registrar on the registration of each such charge ;
- (d) an affidavit sworn or affirmed by a director or the secretary of the company, verifying that the information provided under this section is to the best of his knowledge, complete and accurate in every particular.

(2) Following receipt from a company of the documents required to be provided under subsection (1), the Registrar shall review the register of charges kept by him, and shall make such entries in the register as may be required to ensure the accuracy of the register.

(3) The Registrar shall not enter a memorandum of satisfaction of a charge in whole or in part or of the fact that part of the property or undertaking has been released from a charge or has ceased to form part of the company's property or undertaking, pursuant to a review under this section.

(4) Where a company fails to comply with a notice given under subsection (1)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding fifty thousand rupees.

APPLICATION OF THIS PART TO OVERSEAS COMPANIES

**112.** The provisions of this Part of this Act shall apply in relation to charges on property in Sri Lanka which are created and to charges on property in Sri Lanka which is acquired, by an overseas company.

Application of this Part to charges and property to be acquired by an overseas company.

PART VII

MANAGEMENT AND ADMINISTRATION

REGISTERED OFFICE

**113.** (1) Every company shall have a registered office in Sri Lanka to which all communications and notices may be addressed.

Registered office of a company.

(2) Subject to section 114, the registered office of a company at a particular time is the place that is described in the register as its registered office at that time.

(3) If the registered office of a company is at the office of any chartered accountant, attorney-at-law, or any other person, the description of the registered office shall state—

- (a) that the registered office of the company is at the office of the chartered accountant, attorney-at-law, or any other person ; and
- (b) particulars of the location of those offices.