



ANNO DECIMO QUINTO

GEORGII V REGIS.

A.D. 1924.

No. 1619.

An Act to provide for the Registration of Mortgages and Charges created by Companies, and to amend the law relating to Debentures issued by Companies, and for other purposes.

[Assented to, November 20th, 1924.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Companies (Mortgages, Charges and Debentures) Act, 1924." Short title.

2. (1) This Act is incorporated with The Companies Act, 1892, and the Companies Amendment Act, 1893, and those Acts and this Act shall be read as one Act. Incorporation.
No. 557 of 1892.
No. 576 of 1893.

(2) The Companies Act, 1892, The Companies Amendment Act, 1893, and this Act may be cited together as the "Companies Acts, 1892 to 1924."

3. (1) In this Act "Company" means a company formed or registered under The Companies Act, 1864, or The Companies Act, 1892. Interpretation.

(2) Subject to subsection (1) of this section the terms used in this Act shall have the meanings assigned to them in The Companies Act, 1892.

Information as to Mortgages, Charges, Etc.

4. (1) Every company shall, within twelve months after the commencement of this Act, file with the Registrar for registration, a list of mortgages and charges created before this Act. Registration of mortgages and charges created before this Act.

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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 favor the mortgage or charge was made.

(2) If any company fail to comply with the provisions of subsection (1), 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 mortgages and charges.

Cf. U.K., 8 Edw. 7, c. 69, s. 93.

5. (1) Every mortgage or charge created by a company after the commencement of this Act and being either—

- (a) a mortgage or charge for the purpose of securing any issue of debentures; or
- (b) a mortgage or charge on uncalled 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 prescribed particulars and the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof, accompanied by a statutory declaration verifying the particulars and the execution of the mortgage, and in the case of a copy also verifying it as a true copy of the instrument, 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

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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 the State, 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 the State shall be substituted for thirty days after the date of the creation of the mortgage or charge as the time within which the particulars and instrument or copy are to be filed with the Registrar; and
- II. where the mortgage or charge is created in the State, but comprises property outside the State, the instrument creating or purporting to create the mortgage or charge, or a copy thereof, accompanied by a verifying statutory declaration as aforesaid, may be forwarded for registration, notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country, State, or colony in which the property is situate; and
- 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 purpose 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 the State, 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 the State 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

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(c) a general description of the property charged ; and

(d) the names of the trustees, if any, for the debenture holders, together with the deed, or verified copy thereof, containing the charge, or if there is no such deed, one of the debentures of the series, and the Registrar shall, on payment of the prescribed fee, enter those particulars in the register : 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 indorsed 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 indorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the Registrar for registration the prescribed particulars and the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof, accompanied by a statutory declaration verifying the particulars and 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. 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

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(8) The instruments or copies of instruments creating any mortgage or charge filed by 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.

(9) 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 shall require to be filed or registered under the provisions of the Bills of Sale Act, 1886, anything contained in that Act or any Act amending the same to the contrary notwithstanding.

(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 mortgage, such subsequent mortgage shall not be operative or have any validity at law or in equity unless it is proved to the satisfaction of the Court having cognizance of the case that the subsequent mortgage was given in good faith for the purpose of correcting some material error in the prior mortgage, and not for the purpose of avoiding or evading this Act.

6. (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 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.

Registration of enforcement of security.
Ibid., s. 94.

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

7. (1) Every receiver or manager of the property of a company who 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.
Ibid., s. 95.

(2) Every

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

Rectification of register of mortgage.
Ibid., s. 96.

8. A Judge, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or 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.

Entry of satisfaction.
Ibid., s. 97.

9. 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.

Index to register of mortgages and charges.
Ibid., s. 98.

10. 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.

Penalties.
Ibid., s. 99.

11. (1) If any company makes default in sending to the Registrar for registration the instrument (if any) by which any mortgage or charge is created, or the verified copy thereof, or the particulars of the issues of debentures of a series requiring registration with the Registrar 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 fine 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 authorized or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding One Hundred Pounds.

(3) If any person knowingly and wilfully authorizes 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 indorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding One Hundred Pounds.

12. (1) The

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12. (1) The copies kept at the registered office of the company of instruments creating any mortgage or charge requiring registration under this Act with the Registrar 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 kept pursuant to section 41 of The Companies Act, 1892, shall be open to the inspection of any person on payment of such fee not exceeding One Shilling for each inspection, as the company may prescribe.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

Cf. *ibid.*, s. 101.

(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 authorizing or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding Five Pounds, and a further fine 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.

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 Six Pence 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 the trust deed.

Ibid., s. 102.

(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 Six Pence 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 fine not exceeding Five Pounds, and to a further fine not exceeding Two Pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorizes or permits the refusal shall incur the like penalty.

Debentures and Floating Charges.

14. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Perpetual debentures.

Ibid., s. 103.

15. (1) Where,

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Power to re-issue redeemed debentures in certain cases.

Ibid., s. 104.

15. (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 purpose 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 commencement 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 commencement 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) Nothing in this section shall prejudice—

(a) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the commencement of this Act, as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or

(b) 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.

Specific performance of debenture contract.

Ibid., s. 105.

16. A contract with a company to take up and pay for any debentures of the company may be enforced by a decree or order for specific performance.

Avoidance of certain debentures.

17. Every debenture issued by a company which goes into liquidation within six months after the issue of the debenture, shall be void so far as any security on the company's property or undertaking is thereby conferred, except as a security for an advance or loan made or agreed to be made at the time of the issue of the debenture, but without prejudice to any other right of the person to whom the debenture is issued.

18. (1) Where

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18. (1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V. of The Companies Act, 1892, relating to preferential payments to be paid in priority to all other debts shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

Payment of certain debts out of assets subject to floating charge in priority to claim under the charge.

Ibid., s. 107.

No. 557 of 1892.

(2) The periods of time mentioned in the said provisions of Part V. of The Companies Act, 1892, shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

TOM BRIDGES, Governor.