



MEMO

To: Board of Directors
From: Company Secretary
Subject: **CHARGES REGISTER**

One matter that is frequently overlooked is the need for all companies to create and maintain a *Register of Charges* ('Charges Register').

In virtually all my experience as a Company Secretary – across hundreds of companies – I have found that the Charges Register is not maintained and is usually completely blank.

WHAT IS A CHARGE?

The document creating security over a company's assets (and undertakings, including uncalled capital) in support of a loan/borrowings is usually referred to as a "charge".

A charge does not pass ownership; it merely creates an interest by the lender in the borrower's property and hence that property is burdened by the rights granted to the lender – particularly the right to be repaid out of the proceeds of sale of the property if the borrower is in default.

CHARGES REGISTER

Section 271 of the Corporations Act requires that all companies maintain a Charges Register – even if it is blank – detailing all charges, whether or not registrable with ASIC.

As a minimum the Register must contain:

1. date of creation of charge
2. description of property subject to charge
3. date of acquisition of property charged
4. description of liability secured by charge
5. name of chargee (and/or trustee – if debenture)
6. name of holder of charge (if applicable).

The Charges Register must be kept at the company's Registered Office or Principal Place of Business.

A charge must be entered into the Register on its creation, or on acquisition of property the subject to a charge.



The company must also keep in the same location every document that relates to a charge recorded in the Register.

INSPECTION OF REGISTER

S.271(3) provides that the Charges Register be open for inspection:

- (a) by any creditor or shareholder, without fee
- (b) by any other person, subject to payment of a fee not exceeding what is prescribed in Schedule 4 of the Corporations Regulations.

REGISTRATION OF CHARGES

In addition to entering details of charges into the Register, certain/most charges must be registered with ASIC (under s.262) within 45 days of creation to ensure their enforceability. Priority in a winding up is determined by the timing of registration with ASIC.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.