

# REGISTRATION OF MORTGAGES & CHARGES

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INFORMATION LEAFLET NO. 27 / JUNE 2017

Form Number	Description
C1	Particulars of a charge created by a company incorporated in the State
C1a	Notice of intention to register particulars of a charge created by a company incorporated in the State. First stage of two stage procedure
C1b	Confirmation of particulars of a charge created by a company incorporated in the State. Second stage of two stage procedure.
C3	Particulars of a charge subject to which property has been acquired by a company incorporated in the State
C6	Satisfaction of a charge or judgment mortgage
C7	Partial satisfaction of a charge or judgment mortgage
C10	Particulars of a judgment mortgage
C17	Changes to the particulars of the charge holder/lender of a charge
F8	Particulars of a charge created by a company incorporated outside the State
F8a	Notice of intention to register particulars of a charge created by a company incorporated outside the State. First stage of two stage procedure.
F8b	Confirmation of particulars of a charge created by a company incorporated outside the State. Second stage of two stage procedure
F9	Particulars of a charge subject to which property has been acquired by a company incorporated outside the State

## FAQ regarding Companies Act 2014

### Is there any extra time allowed to file the form?

No. Under the Act, there is no extra time to file a charge form. If the document is not received, within the 21 days as required, the eForm is rejected.

### What is the priority order for charges?

The priority of charges created by a company will be determined by reference to the date of receipt by the Registrar of the prescribed particulars.

**Date of Receipt:** References to the date of receipt of the prescribed particulars are references to –

- (a) if the one stage procedure is complied with in relation to a particular charge, the date of receipt by the Registrar of the prescribed particulars, in the prescribed eForm C1, of the charge; or
- (b) if the two stage procedure is complied with in relation to a particular charge, the date of receipt by the Registrar of the notice, in the prescribed eForm C1a and containing the prescribed particulars, in relation to the charge.

This shall not affect any agreement between persons in whose favour charges have been created in relation to the priority that those charges shall, as between them, have.

- (c) Failure to file eForm C1b (Section 409(4)(b) Companies Act 2014), will result in the notice received under section 409(4)(a) Companies Act 2014, eForm C1a, being removed from the register. (Section 409(5) Companies Act 2014).

### What if several charges are submitted on the same day for the same company and/or in respect of the same property?

Where the date of receipt by the Registrar of the prescribed particulars of the several charges is the same, priority is accorded to the **charge received earliest in time** on the date concerned by the Registrar.

Charge eForms C1, C1a, C1b must be completed online at [www.core.ie](http://www.core.ie). ROS signatures must be used and payment made by credit card/CRO account. The entire process can be completed straight away.

**The Registrar cannot guarantee priority to a particular charge. Priority is attained from the date of receipt only.**

**Do I have to use a form to file a Judgment Mortgage?**

Yes. Judgment Mortgages are submitted using **form C10**. The form must be submitted by the creditor within 21 days of receipt from the Property Registration Authority (PRA) of notice of the registration there of a judgment mortgage. The date of receipt of the notice from the PRA is determined to be 3 days after the PRA issued the notice to the creditor.

**What if the details of the person entitled to the charge have changed since the original charge was registered?**

The CRO should be notified of any such changes by filing a completed **Form C17**.

**How do I register a satisfaction of a charge?**

The company would complete a form C6 for full satisfaction of a charge or C7 for partial satisfaction. The form has changed in that a statement is made by a director and secretary of the company or by two directors regarding the satisfaction. Once this is received, a notice is issued to the chargee stating that unless an objection is received to the registration within 21 days, the satisfaction will be registered. Alternatively, the form C6 or C7 can be completed by the chargee. In such cases, no notification is necessary and the satisfaction is simply registered.

**Is there a penalty for falsely stating that the charge has been satisfied?**

If the satisfaction is submitted by the company and it is found that the persons signed the form knowing it to be false, then the officers in question are guilty of a category 2 offence. Also under section 416(6) Companies Act 2014, if the court considers that the making of the statement contributed to the company being unable to pay its debts, prevented or impeded the orderly winding up of the company or facilitated the defrauding of the creditors, remove the limited liability as the court may specify for the debts and other liabilities of the company.

Category 2 offence – Conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both.

**Is the Slavenburg filing still applicable under the Companies Act 2014?**

No. This practice is discontinued. Under the Act, a charge created by a foreign company that has a place of business in the State, but which is not registered with the CRO as an external company which has established a branch, cannot be registered by the CRO, as the company concerned is not on the CRO register. No charges can be accepted on the Slavenburg file which has been closed - since June 1st 2015.

## 2. Registration of a Charge

A charge, in relation to a company, means a mortgage or a charge, in an agreement (written or oral), that is created over an interest in any property of the company (and in sections 409(8) and 414 to 421 of the Act includes a judgment mortgage) but does not include a mortgage or a charge, in an agreement (written or oral), that is created over an interest in –

- (a) cash;
- (b) money credited to an account of a financial institution, or any other deposits.
- (c) shares, including shares in a body corporate, bonds or debt instruments;
- (d) units in collective investment undertakings or money market instruments; or
- (e) claims and rights (such as dividends or interest) in respect of any thing referred to in any of the foregoing paragraphs (b) to (d).

Property includes any assets or undertaking of the company. Where a charge is created over any interest specified in (a) to (e) above and also includes any property, assets or undertakings not included in those paragraphs, then the charge is to be regarded as a charge under Part 7 of the Act so far as it relates to the property not included in (a) to (e) above.

The registration of mortgages and charges with regard to a company incorporated in the State is governed by section 409 Companies Act 2014. The section provides that the prescribed particulars of a charge verified in the prescribed manner, must be delivered to, or received by, the Registrar within 21 days of the creation of the charge.

### **No extension of time for registration can be given by the CRO.**

Consequently, registration cannot be effected where applications have been received by the CRO outside the 21 day limit, or where amendments or alterations have been made outside that time limit, to particulars lodged within the time limit.

If a company or chargee fails to comply with the requirement to file the charge under Part 7 of the Companies Act 2014, an application may be made to the High Court for an order extending the time for registration under section 417 Companies Act 2014. If an omission or misstatement of any particular charge is noticed after registration, an application for an order rectifying the particulars can also be made to the Court.

## **2.1 Irish Company**

### **Particulars of a charge**

There are two ways in which a charge can be registered under the Companies Act 2014. Registration of a charge can be completed either through the one stage procedure (which has been used under the previous Companies Acts) or by use of the two-stage procedure available under the Act. All particulars of a charge must be completed online. It is not possible to submit a paper form. Submission of a charge can only be effected using CORE - [www.core.ie](http://www.core.ie) - the CRO's online filing facility or by secretarial software package.

<b>One-Stage Procedure</b>	<b>Two-Stage Procedure</b>
<ul style="list-style-type: none"><li>• Submission of <b>eForm C1</b></li><li>• Submission of Filing Fee €40</li><li>• Must be filed within 21 days of creation of charge</li><li>• Failure to submit the form on time will lead to rejection and the document being returned to the presenter.</li><li>• Date of priority is the date of receipt of the eForm C1.</li></ul>	<ul style="list-style-type: none"><li>• Submission of <b>eForm C1a</b></li><li>• Submission of Filing fee of €40</li><li>• Within 21 days of the submission of Form C1a, a second document is submitted - <b>eForm C1b</b>.</li><li>• Failure to file form C1b, will lead Form C1a to be rejected and returned to the presenter.</li><li>• Date of priority is the date of receipt of the eForm C1a.</li><li>• Two-stage procedure accords <b>priority</b> over one-stage procedure where a form C1a is filed earlier than C1 - even though C1b may be filed later than the same C1.</li><li>• Particulars on eForm C1a cannot be altered.</li></ul>

### **2.1.1 External Company**

#### **Particulars of a charge**

Foreign or external limited liability companies which establish a branch in the State are obliged to register with the CRO under Section 1301(1) of the Companies Act 2014. Where a registered external company creates a charge over a property in the State, which charge requires to be registered with CRO, the requisite particulars of the charge are required to be delivered to the Registrar of Companies. Such charges will be registered by CRO and a certificate of registration will issue to the presenter in due course.

If the company fails to comply with the requirement to file within 21 days, the charge will be void against the liquidator and any creditor of the company. All particulars of a charge must be completed online and signed with a ROS signature. It is not possible to submit a paper form. Submission of a charge can only be effected using CORE - [www.core.ie](http://www.core.ie) - the CRO's online filing facility or a secretarial software package.

One Stage Procedure	Two Stage Procedure
<ul style="list-style-type: none"> <li>• Submission of <b>eForm F8</b></li> <li>• Submission of Filing Fee €40</li> <li>• Must be filed within 21 days of creation of charge</li> <li>• Failure to submit the form on time will lead to rejection and the document being returned to the presenter.</li> <li>• Date of priority is the date of receipt of the eForm F8.</li> </ul>	<ul style="list-style-type: none"> <li>• Submission of <b>eForm F8a</b></li> <li>• Submission of Filing fee of €40</li> <li>• Within 21 days of the submission of Form F8a, a second document is submitted - <b>eForm F8b</b>.</li> <li>• Failure to file eForm F8b, will lead eForm F8a to be rejected and returned to the presenter.</li> <li>• Date of priority is the date of receipt of the eForm F8a.</li> <li>• Two-stage procedure accords <b>priority</b> over one-stage procedure where F8a filed earlier than a eForm F8 - even though relevant F8b may be filed after same F8.</li> <li>• Particulars on eForm F8a cannot be altered.</li> </ul>

## 2.2 Judgment Mortgages

If judgment is recovered against a company and that judgment is subsequently converted into a judgment mortgage affecting any property of the company, there is now a requirement on the part of the **creditor** to file **Form C10**.

The judgment mortgage shall be void against the liquidator and any creditor of the company unless the **Form C10** and the relevant **Judgment Mortgage document** are submitted together with the filing fee of €40.

The form must be received by the Registrar not later than **21 days after the date on which notification** by the Property Registration Authority of the judgment mortgage's creation is received by the judgment creditor.

It is presumed, until the contrary is proved, that the judgment creditor received notification, of the judgment mortgage's creation, from the Property Registration Authority on **the third day** after the date on which that notification is sent by it to the judgment creditor or his or her agent.

### Judgment Mortgage Document

The "relevant judgment mortgage document" means a certified copy of, as appropriate -

- Form 60, 60a or 60b set out in the Schedule of Forms to the Land Registry Rules 2012, (S.I. No. 483 of 2012) as amended by the Land Registry Rules 2013 (S.I. No. 389 of 2013)
- Form 16 set out in the Schedule to the Registration of Deeds (No.2) Rules 2009 (S.I. No.457 of 2009), used for the purposes of converting the judgment concerned into a judgment mortgage.

## 2.3 Where a company acquires property on which there is an existing charge

Where a company acquires any property which is subject to a charge that, if it had been created by the company after the acquisition of the property, would have given rise to the duty under section 411 Companies Act 2014, on the part of the company with respect to the charge's registration, then the company shall have the following duty.

That duty is to take steps so that there is received by the Registrar, not later than **21 days** after the date on which acquisition of the property concerned is completed, the prescribed particulars, in the prescribed form (**Form C3**), of the charge.

If default is made in complying with this section, the company and any officer of the company who is in default shall be guilty of a category 4 offence.

**Category 4 offence** - A summary offence only, punishable by the imposition of a Class A fine. A

Class A fine is a fine within the meaning of the Fines Act 2010. (i.e. a fine not exceeding €5,000).

#### **External Company: Charge where property has been acquired by a company incorporated in the State.**

Under section 1301(4) Companies Act 2014, where a company acquires any property which is subject to a charge that, if it had been created by the company after the acquisition of the property, would have given rise to the duty under section 409(1) on the part of the company with respect to the charge's registration, then the company shall have the following duty.

That duty is to take steps so that there is received by the Registrar, not later than 21 days after the date on which acquisition of the property concerned is completed, the prescribed particulars, in the prescribed form (**Form F9**), of the charge.

If default is made in complying with this section, the company and any officer of the company who is in default shall be guilty of a category 4 offence.

### **3. Extension of time to file charge or to rectify Register**

The CRO cannot grant an extension of time to file a charge. The form must be submitted within the times specified in sections 409(3) and (4), section 411(2) and section 413(2) and (3) of the Act. However, the High Court does have the power to extend the time to file the charge. It also has the power to allow correction of any misstatement of information that may have happened.

Under section 417 Companies Act 2014, the court may grant the following relief where it is satisfied that the omission to register a charge within the time required or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction –

- (a) was accidental or due to inadvertence or to some other sufficient cause; or
- (b) 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 that relief in respect of such an omission or misstatement.

That “relief” is to order, on such terms and conditions as seem to the court just and expedient, that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified. An application for relief under this section may be made on behalf of the company to the Court or by any other person interested.

### **4. Changes in Person Entitled to Charge (charge holder) information particulars**

The CRO register of charges records “the persons entitled to the charge” as one of the mandatory items as specified in Section 414(1)(f) Companies Act 2014.

In the event that there is a change in the details of the lender under a registered charge during the lifetime of that charge, it is possible to have the details of the person(s) entitled to the charge amended on the CRO register by submitting **Form C17**. Filing fee €15. Failure to notify the CRO of any change in the name/address of the charge holder (person entitled to the charge) may result in a charge being incorrectly registered as fully satisfied, as the notice may issue to an incorrect address. No responsibility attaches to CRO in such circumstances.

### **5. Satisfaction of a Charge**

Details of the satisfaction of a charge should be completed on the following forms:

- Form C6 - Full Satisfaction
- Form C7 - Partial Satisfaction

Both forms have a filing fee of €15. On receipt, the Registrar may enter a memorandum, on evidence being given to his or her satisfaction with respect to any charge registered —

- that the debt in relation to which the charge was created has been paid or satisfied in whole or in part; (**Form C6**), or
- that part of the property charged has been released from the charge or has ceased to form part of the company's property (**Form C7**).

The statement in the prescribed form can be signed by a director and secretary of the company, or by two directors of the company, stating that the satisfaction or release has occurred.

*The Forms C6 and C7 can also be signed by the chargee. In such cases no notice need issue under section 416(1) Companies Act 2014 and the satisfaction will be registered immediately.*

### **Notice to Chargee**

Where the satisfaction or release has not been signed by or on behalf of the chargee, notice to the person to whom such charge was originally given or to the judgment creditor, as the case may be, will be sent prior to the registration of the satisfaction. 21 days notice will be given. Form C17 should be filed where details of the charge holder have changed, prior to filing C6/C7.

### **False Statement**

Where a person signs a Form C6 or C7 knowing it to be false, the person shall be guilty of a category 2 offence. Where a person signs and in doing so did not honestly believe on reasonable grounds that the statement was true, and the court considers that the making of that statement –

- contributed to the company being unable to pay its debts;
- prevented or impeded the orderly winding-up of the company; or
- facilitated the defrauding of the creditors of the company, the court, on the application of the liquidator or examiner or receiver of the property of, or any creditor or contributor of, the company, may, if it thinks it proper to do so, make the following declaration.

That declaration is that that signatory shall be personally liable, without limitation of liability, for all or such part as the court may specify of the debts and other liabilities of the company.

**Category 2 offence** – Conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both.

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