



Article

Registering Security Granted by Exempted Companies and Partnerships in Bermuda

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With defaults and insolvencies on the rise due to difficult trading conditions caused by, amongst other things, the global pandemic, lenders and secured parties (a “Secured Party”) should ensure the security they hold over interests in exempted companies and partnerships incorporated or registered in Bermuda, and/or their assets, has been registered in Bermuda to ensure the priority such security is supposed to have. Registration of such security interests ensures that the Secured Party has priority over (1) any subsequently registered interests and (2) any interests that are registrable but have not been registered.

Bermuda Security Interest Registration Process

Exempted Companies

The Bermuda Registrar of Companies maintains a publicly searchable register of charges whereby a charge over the assets of a Bermuda exempted company can be registered. Under the Bermuda Companies Act 1981 (the “Companies Act”) a charge includes any interest created in property by way of security, including any mortgage, assignment, pledge, lien or hypothecation.

Registration of a charge with the Registrar is not necessary for such charge to be valid, but doing so will seek to establish its priority over any unregistered charges and any subsequently registered charges to the extent Bermuda law governs the priority of such charge. While there is no statutory time limit in which a filing with the Registrar must be made, it is recommended that any filing be made as soon as possible, as priority is determined by the date that the charge is registered and not on the date of its creation. However, registration only establishes priority amongst other registrable interests; it will not provide priority over any interest that cannot be registered.

A charge registration filing with the Registrar can be made by the Bermuda exempted company that has granted the charge, the Secured Party or any other interested party (or attorneys acting on their behalf). To effectively register a charge pursuant to the Companies Act, the charge registration filing with the Registrar must include (i) the particulars of the charge as set out in a prescribed form, (ii) either an original or certified copy of the security document, and (iii) the prescribed fee payable to the Registrar. There is no stamp duty chargeable on the security document itself. Once registered, the Registrar will issue a Certificate of Registration of Charge/Mortgage. A Secured Party should request either the original or copy of such certificate where they themselves have not made the registration filing.

Furthermore, a company that is incorporated outside of Bermuda and holds property in Bermuda (i.e. shares in a Bermuda exempted company) can register a charge over such property with the Registrar in the same manner as described above. Where a charge has been created by a Bermuda exempted company on its assets located outside of Bermuda, it is possible to register with the Registrar notwithstanding that further registration or actions may be necessary in the jurisdiction where the assets are located to perfect the security interest.

Limited Liability Company

A charge over the assets of a Bermuda limited liability company can be registered with the Registrar pursuant to the Limited Liability Company Act 2016 in order to secure the priority of such charge. The process is exactly the same as that pursuant to the Companies Act explained above.

Similarly, where a charge has been created by a Bermuda limited liability company on its assets located outside of Bermuda, it is possible to register with the Registrar notwithstanding that further registration or actions may be necessary in the jurisdiction where the assets are located to perfect the security interest.

Bermuda Partnerships

Where a Bermuda partnership has elected to have legal personality it can hold assets in its own name and grant security over such assets. The procedure for making a filing with the Registrar to register a charge over the assets of the partnership is similar to the above and dealt with pursuant to the Partnership Act 1902.

However, a security interest over the assets of a Bermuda partnership that has not elected to have legal personality cannot be registered with the Registrar. Instead, such interest is registrable with the Registrar General pursuant to The Mortgage Registration Act 1786, and registering will similarly seek to establish priority.

Pursuant to the Mortgage Registration Act, an application to register can be made by any person holding any such interest (i.e. a lender, a secured party or any other interested party). The application must include (i) a memorandum of mortgage, (ii) either an original or certified copy of the security document, and (iii) the prescribed fee payable. The memorandum of mortgage must set out (i) the names of the mortgagor and mortgagee, (ii) the date of such mortgage, (iii) the particular property mortgaged, and (iv) the sum secured.

Mortgages against a Bermuda registered ship, aircraft or aircraft engine are not registerable under the above mentioned Acts. A ship mortgage is registrable with the Bermuda Shipping and Maritime Authority, and mortgages against an aircraft or aircraft engine are registrable with the Bermuda Civil Aviation Authority. For more detail on such registrations, please refer to our relevant shipping and aviation brochures.

Registering security interests in Bermuda is straightforward and is typically completed fairly expeditiously. Secured parties should ensure that their security interests are registered insofar as possible in order to secure the priority of such security. This is just a general overview of the charge registration process in Bermuda. For further information or assistance, please contact those listed below.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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