



**COMPANIES  
OFFICE**

**REGISTRATION  
OF CHARGES**

A recent English case of *Reg.-v- Registrar of Companies ex parte Esal (Commodities) Ltd.(In Liquidation)* The Times, November 26th, 1984 has cast considerable doubt on the practice of permitting applicants to present a correctly completed Form 47 in lieu of an earlier defective Form which had been rejected, while retaining the priority obtained by the lodgement of the original Form 47.

The Court held that while in ordinary litigation the certificate issued by the Registrar under Section 98(2) of the U.K.Companies Act 1948 was conclusive evidence that the requirements of registration of a charge under section 95(1) of that Act had been complied with, that was not the case in judicial review proceedings. In that case the Applicants had lodged the Form 47 and accompanying documents for the registration of a charge dated the 9th February 1984 on the 29th February 1984. These were considered unsatisfactory by the Registrar and another Form 47 with the same accompanying documents was lodged by the 29th March. The second Form 47 was dated February 29th and the Registrar recorded February 29th as the date of registration.

The Court held that the prescribed particulars delivered on February 29th were defective and rightly considered unsatisfactory by the Registrar but he then accepted further particulars outside the 21 days period prescribed.

The legislation and procedures governing the registration of charges created by companies in this jurisdiction are very similar to those in the U.K. It would seem that the Judge's reasoning is impeccable and the Companies Office would be justified in refusing to allow the practice permitted by its English counterpart. The Companies Registration Office have already adopted a practice which accords with the decision in this case.

The decision leaves open two question which immediately occur:-

1. Would the position have been any different if instead of a new Form 47 being lodged, the original Form 47, with amendments had been relogged? It is suggested that once the form is lodged outside the 21 day period it would not have been any different.
2. If the new or corrected Form 47 was in fact lodged within the original 21 day period from the date of the charge is the Registrar entitled to record the date of first lodgement as the date of registration or must the date of lodgement of the correct particulars be the date of registration? It is suggested that only the date of lodgement of correct particulars can be judged to be the date of registration.

It should be noted that the judgement of Hamilton J. in the Irish case of *Lombard & Ulster Banking (Ireland) Ltd.-v-Amurec Ltd.(1976)* ILTR 1 was not a case in which judicial review was involved. The liquidator in that case was not seeking to have the Registrar's



decision quashed (he was presumably too late to do so) but defending a claim for an Order of possession on the grounds that the registration of the Charge was void, the necessary particulars not having being delivered to the Registrar within the prescribed 21 days. In the Esal case the Court specifically drew a distinction between those proceedings which were by way of judicial review and what the Court described as “ordinary litigation”.

**COMPANIES**

**OFFICE**

**REGISTRATION  
OF CHARGES**

(Contd.)