

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 15.00 HOURS TUESDAY 7 SEPTEMBER 2004

REGISTRATION OF RIGHTS IN SECURITY BY COMPANIES

Recommendations to rationalise the registration scheme for rights in security granted by companies by removing unnecessary registration requirements and by improving the structure of the law of floating charges in Scotland have been published today by the Scottish Law Commission.

BACKGROUND

The report is published in response to a reference from the Department of Trade and Industry to examine the present scheme on the registration and priority of rights in security as it applies to companies registered in Scotland and to security granted under Scots law by oversea companies and companies registered in England and Wales. A more extensive reference was given to the Law Commission for England and Wales. These references are part of the Department's wider programme of reform of company law.

CRITICISMS OF THE PRESENT LAW

The current arrangements require a company granting a floating charge or certain other securities to register particulars of the security with the Registrar of Companies within 21 days of the grant of the security. A company is also required to maintain its own register of securities at its registered office. These arrangements are widely regarded as unsatisfactory. The principal unsatisfactory features are –

- The period of 21 days allowed for registration of particulars creates an "invisibility period" which makes the register unreliable. A search will not disclose securities granted during the previous 21 days. This is particularly important in the case of floating charges which do not receive any other form of publicity.
- The register of charges is also not relied upon since the particulars may be inaccurate or out of date.
- Securities other than floating charges may be granted by non-corporate debtors. Such securities have their own forms of publicity. It is difficult to

justify making the validity of those securities subject to additional requirements when granted by a company.

- In so far as the legislation requires registration at Companies House of securities – particularly securities over land – which are also registered in other specialist registers, there is unnecessary duplication.
- Although creditors of the company are entitled to inspect the company's own register, and copies of the deeds entered in it, the register is often poorly maintained.

PRINCIPAL RECOMMENDATIONS

- A new register of floating charges should be set up and maintained by the Keeper of the Registers of Scotland; the text of the document itself, rather than just particulars, should be registered; registration in this register should be essential in order to constitute a floating charge and floating charges should generally rank *inter se* and with other forms of security by date of registration or constitution of the real right as the case may be; similarly, any variation, assignation or discharge of a floating charge should be registered before it may affect any third party.
- To facilitate the mechanics of a secured transaction it should be possible to register, in the Register of Floating Charges, an advance notice. If the floating charge is registered within 21 days it should be treated as having been registered on the date of registration of the advance notice.
- Standard securities over land and other securities by companies which are already publicised in a specialist register should no longer require additional registration at Companies House and particulars of assignments in security should also cease to be registrable.
- To foster financial transparency: a company should be obliged (1) as part of the annual return to the Registrar of Companies to list all securities which it has granted and which have not been discharged; (2) to supply to anyone making the request, and paying any fee as may be charged within prescribed limits, details of any right in security granted after the last return date; and (3) to permit inspection of copies of the security documents at the company's registered office again on payment of any fee as may be charged within prescribed limits. (Companies should no longer be required to maintain an internal register of securities.)

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Honourable Lord Eassie. The other Commissioners are currently Professor Gerard Maher QC, Professor Kenneth G C Reid, Professor Joseph M Thomson and Mr Colin J Tyre QC.

2. Further information can be obtained by contacting Mrs Gillian B Swanson, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel 0131 668 2131, Fax: 0131 662 4900, e-mail: info@scotlawcom.gov.uk).

3. The report may be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO Scotland Bookshop.