



Scottish Law Commission

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS, THURSDAY 31 OCTOBER 2002

REGISTRATION OF RIGHTS IN SECURITY BY COMPANIES

Proposals for reform and simplification of the current registration scheme for rights in security granted by companies are contained in a discussion paper published today by the Scottish Law Commission.

BACKGROUND

1. As part of its wider programme of reform of company law, the Department of Trade and Industry submitted, on 3 May 2002, a reference to the Scottish Law Commission requesting it 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, and to make proposals for reform. A parallel, but more extensive, reference was received by the Law Commission for England and Wales.

MAIN PROBLEMS WITH THE EXISTING LAW

2. The current scheme for registration of rights in security granted by companies is widely regarded as unsatisfactory. The main problems are:

- the register of charges is regarded by most practitioners as incomplete and unreliable. Not all forms of security require to be registered and the selection is often seen as illogical and out of date. Since the legislation allows a period of 21 days within which to register particulars of a registrable security, it creates an

"invisibility period" during which a search of the register will not disclose all registrable securities;

- 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 it creates unnecessary duplication;
- the sanctions applied in the event of a charge not being registered in time are viewed as unsatisfactory;
- as regards securities other than floating charges (which generally may only be granted by corporate debtors) it is difficult to see any good justification for treating companies differently from other debtors giving security for their borrowings or debts.

MAIN PROPOSALS FOR REFORM

3. Floating charges and standard securities represent around 95% of the securities presented for registration, while assignments in security are the most important of the remaining security types. The Commission's main proposals for reform in respect of registration of these three types of securities are:

Floating charges

- Floating charges should continue to be registrable at Companies House but registration should be constitutive of the real right. This would be consistent with the usual role of registration in Scots law and would do away with the need for sanctions for non-registration. Registration would be the priority point for ranking.

Standard securities and other registered rights in security

- Standard securities and other securities which are already publicised in a specialist register should no longer be required to be registered at Companies House too. This would greatly simplify the current registration scheme.

Assignations

- Assignations in security should cease to be registrable.

OTHER PROPOSALS

4. The Commission asks consultees whether the security deed itself should be registered instead of particulars as under the current scheme. It also suggests a number of other modernising measures including reform proposals regarding a company's internal register of charges and the rules for registration of variations and discharges of securities.

Comments are invited by 31 January 2003.

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 Mr Patrick S Hodge QC, Professor Gerard Maher, Professor Kenneth G C Reid and Professor Joseph M Thomson.
2. Further information can be obtained by contacting Gillian 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 paper may be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO Scotland Bookshop.