

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS ON 24 JUNE 2011

A HELPING HAND FOR SCOTTISH BUSINESSES - MOVEABLE TRANSACTIONS

The Discussion Paper published today by the Scottish Law Commission looks at three connected areas of law, all important to the smooth running of the Scottish economy. In all three areas Scots law appears to be out of date, and insufficiently business-friendly. From an international perspective current Scots law would appear to be in need of radical reform.

- (i) The transfer of financial rights (ie a creditor transferring the right to payment, so that the debtor will have a new creditor).
- (ii) Security over corporeal moveable property. (“Security” means security for a debt.) Although Scots law, like other systems, allows security by delivery to the lender (eg handing over a gold watch to a pawnbroker), there are legal hurdles in the way of non-possessory security.
- (iii) Security over incorporeal moveable property. Here too the current law would seem to be capable of considerable improvement.

The Discussion Paper discusses the current law, identifies its shortcomings, and suggests possible ways forward. Other legal systems are looked at, including the model that originated in the USA and has now been adopted (with some variations) in a number of other countries including Australia, Canada and New Zealand. Although the paper concludes that a wholesale adoption of this model would not be appropriate, at least at the present time, it is suggested that Scots law would benefit from adopting some of its ideas.

It is proposed that there should be a new type of security right, that could cover both corporeal and incorporeal moveable property. There would be a new online Register of Moveable Transactions, in which the security right would be registered. The new register could also be used to register transfers of financial rights, for example in securitisations and factoring.

Lord Drummond Young, the Chairman of the Commission, said: “The value of moveable property which may be transferred or used as security for a debt is substantial but much of Scots law in this area is regarded as being out of date and cumbersome in operation. This may place Scottish businesses at a competitive disadvantage and lead to the loss of legal financial and commercial business to England and elsewhere. Our aim, through the

introduction of a new type of security right and improvements to the existing law, is to simplify Scots law making it more efficient in economic terms and thus more attractive to users or potential users."

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 Hon Lord Drummond Young, a Court of Session judge. The other Commissioners are Laura J Dunlop QC, Patrick Layden QC TD, and Professor Hector L MacQueen. The Chief Executive is Malcolm McMillan.
2. Further information can be obtained by contacting John M Dods, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gsi.gov.uk).
3. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO (www.tsoshop.co.uk).