

**REGISTRATION OF CHARGES
CREATED BY COMPANIES AND
LIMITED LIABILITY PARTNERSHIPS**

Proposals to amend the
current scheme and relating
to specialist registers

SECTIONS 893 & 894, COMPANIES ACT 2006

Registration of Company Charges

Under English law, companies are able to use any or all of their assets as security for loans. This involves the creation of a charge over the company's assets. The scope for companies to use assets as security for loans is more restricted under Scots law as that law does not recognise fixed non-possessory charges over goods.

The scheme for registration of company charges is set out in the Companies Act 2006¹. This scheme, which is intended to prevent the concealment by companies of secured credit, has been criticised particularly because:

- the list of registrable charges has not been revised in line with changes in law and commercial practice;
- the particulars on the public record for a charge may not be an accurate reflection of the charge created; and
- the procedures for registration are cumbersome.

The Department is seeking:

- views on proposals to amend the current scheme based on the 2001 recommendations of the Company Law Review and the subsequent advice of the Law Commission and answers to associated questions; and
- answers to questions relating to registration of company charges over assets for which there is a specialist register.

Issued: 12 March, 2010

Respond by: 18 June, 2010

Enquiries to: Anne Scrope, 0207 215 2194, anne.scrope@bis.gsi.gov.uk

This consultation is relevant to UK companies, overseas companies, limited liability partnerships (LLPs), their creditors, legal advisors to companies and LLPs and their creditors, and to those who assess the financial status of companies.

¹ Part 25, which largely re-enacts the law as it was in Part 12 of the Companies Act 1985.

REGISTRATION OF CHARGES CREATED BY COMPANIES AND LIMITED LIABILITY PARTNERSHIPS

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1. EXECUTIVE SUMMARY

This consultation document makes proposals to revise the current scheme for the registration of company charges under the Companies Act 2006 based on the 2001 recommendations of the Company Law Review and the subsequent advice of the Law Commission. They involve possible changes to:

- which charges must be registered;
- how charges may be registered including the introduction of electronic registration at Companies House; and
- the consequences of registering and not registering a registrable charge;

Consultees' views are sought both on the proposals and on a number of questions, including whether the time limit for registration should be abolished. The document also considers the scope for treating as registered under the Companies Act charges that have been registered in certain specialist registers.

2. HOW TO RESPOND

This consultation was opened on 12 March 2010.

The deadline for responses is 18 June 2010.

There is a discussion forum on <http://www.bis.gov.uk/companycharges> with a thread for each of the following topics:

- the requirement to register certain charges
<http://www.bis.gov.uk/companycharges/requirement>;
- procedures for registering charges
<http://www.bis.gov.uk/companycharges/procedures>;
- public access to information about companies' charges
<http://www.bis.gov.uk/companycharges/access>;
- application to entities other than companies registered under Companies Acts <http://www.bis.gov.uk/companycharges/entities>;
- specialist registers <http://www.bis.gov.uk/companycharges/specialist>;
- impact assessment of the proposals
<http://www.bis.gov.uk/companycharges/impact>.

We hope you will join in this discussion, whether or not you also reply directly to the questions.

Views are sought on all the proposals in this consultation document. In addition, we would welcome answers to specific questions. Questions 6.A-6.E relate to the costs and benefits of the proposals so that we can assess their likely impact. All the proposals and questions are listed in Annex A.

You may respond how ever you find most convenient. There is a response form that you can download at <http://www.bis.gov.uk/companycharges/responseform> that has tick boxes and expandable space for comments. Whether or not you use this response form, please reply to companiesact2006@bis.gsi.gov.uk; it would be helpful if you were to put “response to charges consultation” in the subject title. If you would prefer to respond by post, please send it to

Anne Scrope
Corporate Law and Governance
Department for Business, Innovation and Skills
1 Victoria Street,
London SW1H 0EY

or by Fax to: 0207 215 0235

If you have any policy queries about the consultation, these should also be addressed to Anne Scrope at the above address, tel 0207 215 2194.

When responding, please could you make clear if, in some way, you consider that your response is from the viewpoint of companies taking out secured loans and/or those who take security for their lending to companies and/or other potential creditors and/or some other group. Also please could you make clear whether you are responding on behalf of a company or an organisation or if you are responding in a personal capacity.

If you have concerns about the way in which this consultation is being managed, please refer to Annex D which has the Code of Practice for Consultations and provides contact details for complaints.

A list of those organisations and individuals consulted is in Annex E. We would welcome suggestions of others who may wish to be involved in this consultation process.

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3. CONFIDENTIALITY & DATA PROTECTION

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004. If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public

authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Furthermore we intend to share relevant parts of the responses to this consultation with Companies House, the Scottish Executive, the Land Registry, Registers of Scotland and the Land Registry of Northern Ireland. If you wish that your response not be shared in this way, please could you make this clear in your response.

4. REFERENCES USED THROUGHOUT THIS DOCUMENT

Throughout this consultation document (including footnotes), we use the following abbreviations:

“1985 Act” The Companies Act 1985

“1989 Act” The Companies Act 1989

“2006 Act” The Companies Act 2006

“2007 Act” The Bankruptcy and Diligence etc (Scotland) Act 2007

“2009 Act” The Banking Act 2009

“2003 Regulations” The Financial Collateral Arrangements (No 2) Regulations 2003 (S.I. 2003/3226) which implement the European Directive on Financial Collateral Arrangements (2002/47/EC)

“2008 Regulations” The Companies (Particulars of Company Charges) Regulations 2008 (S.I. 2008/2996)

“2009 Regulations” The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 (S.I. 2009/1917)

“The CLR Report” *Modern Company Law for a Competitive Economy: Final Report*, the Company Law Review Steering Group, URN 01/942 (2001)

“The Law Commission’s Report” *Company Security Interests*, Report by the Law Commission (2005) Law Com No. 296, Cm 6654

“The Scottish Law Commission’s Report” *Report on Registration of Rights in Security by Companies*, Scottish Law Commission Report (Scot Law Com No. 197) 2004.

5. INTRODUCTION

1. Recent lending to UK businesses peaked at £17 billion in October 2007². Most UK companies secure their borrowing through charges over some or all of their assets. Six lenders account for about two-thirds of this³. A 2004 survey of smaller quoted companies showed that nearly 60 per cent had granted a fixed charge and a similar percentage a floating charge; a significant minority had no borrowings⁴. Smaller companies make less use of forms of bank lending other than overdrafts. Records at Companies House show that there is a significant element of secured commercial loans that are given by individuals.

2. The law relating to registration of company charges is of real importance to capital markets as it helps to guard against fraud and to facilitate commercial borrowing. As noted by Professor Diamond in 1989, and quoted by the Law Commission in 2005:

“... the general requirement for the registration of charges under the Companies Act commands almost universal support and there is no demand for its abolition. Apart from the objective of providing information for persons proposing to deal with the company so that they, or credit reference agencies on their behalf, can assess its creditworthiness, persons considering whether to provide secured credit can find out whether the proposed security is already the subject of a charge; by the same token, a registration system benefits the company itself if it is enabled to give some sort of assurance to a prospective secured creditor that the property it is offering as security is unencumbered. Registration can also ease the task of a receiver or liquidator in knowing whether to acknowledge the validity of an alleged mortgage or charge, and does away with the risk of fraud by inventing a security only when a receiver is appointed or the company goes into liquidation. One can also recognise that, in addition to the use of information by financial analysts and persons considering whether to invest in a company, there is today a general climate of opinion in favour of public disclosure of companies’ financial activities.”⁵.

The current scheme⁶

3. The current scheme for the registration of company charges is set out in Part 25 of the 2006 Act. It is the same as that provided by Part 12 of the 1985 Act. Although Part 12 was prospectively repealed and replaced by the 1989 Act⁷, these amendments and repeals were never brought into force. The scheme is essentially the same as that first introduced by the Companies Act 1900. In the 10 months to January 2010, 124,373 charges created by GB companies were registered; a reduction of about 30 per cent on the same period a year earlier.

² Statistic obtained from www.bankofengland.co.uk.

³ *Trends in Lending*, Bank of England, January 2010.

⁴ *The financing of small quoted companies: a survey*, Peter Brierley & Mike Young, <http://www.bankofengland.co.uk/publications/quarterlybulletin/qb040204.pdf>.

⁵ A.L. Diamond, *A Review of Security Interests in Property* (1989), HMSO, ISBN 011 514664 4, para 11.1.5 as quoted in the Law Commission’s Report, para 1.3.

⁶ As provided by sections 860-82, 2006 Act.

⁷ Sections 92-104, 1989 Act.

4. The main purpose of the current scheme for registration of company charges is to make public whether a company has used certain of its assets to secure borrowing. The express intention in the introduction of the scheme in 1900 was to penalise the concealment of secured credit. Under the current scheme, the register does not purport to provide an up-to-date accurate record of a company's complete indebtedness. What it does provide is an assurance to third parties that any registrable existing charge:

- which is not on the Companies House record will be invalid against liquidators, administrators and creditors in the event of the company's insolvency (unless it was created very recently);
- which is on the Companies House record will not be invalid for want of registration against liquidators, administrators and creditors in the event of the company's insolvency.

5. Under this scheme, the requirement to register a charge arises *after* its creation, with sanctions for failure to register. It is a "transaction-filing" scheme. Transaction-filing is not the only model for a scheme for the registration of company charges. The principal alternative scheme is "notice-filing" under which what is filed is a notice that indicates that the chargee has taken or intends to take security over the specified assets. Notice-filing was adopted in 1952 by Article 9 of the Uniform Commercial Code for the United States and is now used throughout the United States, Canada, and New Zealand. Under notice-filing schemes, the relative priority of registered charges is determined by their dates of registration. The pressure to change to notice-filing has two main causes. First, the view that the existing scheme does not resolve priority issues; second, that it is inefficient.

6. Since 1952, there have been several reports recommending that the UK scheme be replaced by a notice-filing scheme⁸, most recently those from the Company Law Review ("CLR")⁹ and the Law Commission¹⁰. The CLR were concerned that the sanction of invalidity¹¹, as it exists at present, may constitute a disproportionate deprivation of a person's possessions in contravention of the European Convention on Human Rights¹² ("ECHR"). They noted that the sanction of invalidity underpins the present system but that it is not absolutely essential to notice-filing. They therefore recommended that the Law Commission and the Scottish Law Commission be requested to examine the system for registering company charges. The Law Commission view was that the sanction of invalidity is not incompatible with ECHR.

⁸ 1971: The Report of the Committee on Consumer Credit (1971) Cmnd 4596, chaired by Lord Crowther; 1986: Report by Working Party on Security over Moveable Property chaired by Professor Halliday (Scottish Law Commission); 1989: *A Review of Security Interests in Property*, chaired by Professor Diamond for the DTI.

⁹ The CLR Report, Chapter 12.

¹⁰ The Law Commission's Report.

¹¹ 2006 Act, sections 874(1) and 889(1). This sanction is described in paragraphs 30-32 and considered in in paragraphs 37-40 below.

¹² Article 1 of Protocol 1.

Changes to the current scheme

7. Following consultation over the economic impact of the Law Commission's proposals, the 2006 Act did not implement the Law Commission's proposals for a notice-filing regime. Rather, it reproduced the provisions of the 1985 Act with minimal changes. However, it provides the Secretary of State with a power to alter, add or repeal the provisions relating to registration of charges¹³. The Department's view is that this does not provide the power to determine the relative priority of registered charges. Therefore it is not possible to use this power to introduce a notice-filing system or otherwise provide for priority rules. However, it is possible to use this power to address some of the inefficiencies of the current scheme. A commitment to use this power to revise the existing scheme was made during the passage of the Bill when Lord Sainsbury said:

“We intend to use that power to address the many imperfections of the present system, particularly those noted by the Company Law Review in its final report.

“In particular, we intend to use it to update the list of charges to which the provisions apply, to provide that a copy of the instrument, rather than the instrument itself, be delivered to the Registrar of Companies, and for other measures to improve the existing system to reduce the burdens on companies and on the Registrar of Companies. But we do not expect to use the power immediately. Rather, we intend to consult fully, building on the discussions that have been continuing for some time, and to take account of changes in the pipeline to enable electronic conveyancing in England and Wales and automated land transfer in Scotland.”¹⁴.

8. Chapter 6 of this Consultation Document sets out proposals to revise the current scheme. These proposals are based on those put forward by the CLR in case their main proposal, that the system in Part 12 of the 1985 Act be replaced by a notice-filing system, were to be rejected¹⁵. The proposals also take account of the work of the Law Commission. The Commission's 2002 consultation paper¹⁶ suggested an alternative based on the CLR proposals for the present system. Many of the detailed recommendations in their Final Report¹⁷ are relevant to the existing scheme.

9. The proposals in Chapter 6 also take account of certain provisions in the 1989 Act¹⁸. These provisions were based on the recommendations Professor Diamond made in advance of the publication of the report of the committee which he chaired¹⁹.

¹³ Section 894(1), 2006 Act.

¹⁴ Companies Bill: Lords Consideration of Commons Amendments, 2 Nov 2006; Hansard, Column 480.

¹⁵ Paragraphs 12.70-12.83, the CLR Report.

¹⁶ *Registration of Security Interests: Company Charges and Property other than Land*, the Law Commission, Consultation Paper no.164, ISSN 1357-9223.

¹⁷ The Law Commission's Report.

¹⁸ Sections 92-104 of the 1989 Act provided substitutions for sections 395-423 of the 1985 Act; these provisions were not brought into force.

¹⁹ A.L. Diamond, *A Review of Security Interests in Property* (1989).

Specialist registries

10. The 2006 Act also provides power to make provision so that a charge registered in a specialist register is treated as if it had been registered at Companies House²⁰. Chapter 7 of this Consultation Document sets out proposals to use this power for floating charges registered at the proposed Register of Floating Charges in Scotland and for charges over land in England and Wales.

²⁰ 2006 Act, section 893.

6. PROPOSALS TO IMPROVE THE CURRENT SCHEME FOR REGISTRATION OF CHARGES

11. This Part of the consultation document considers the scheme of registration of charges as it applies to companies incorporated in the United Kingdom (“UK companies”). It is arranged as follows:

	paragraphs	proposals	questions
The Requirement to Register Certain Charges			
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The Requirement to Register Certain Charges

If you would like to join in an internet discussion of the issues relating to the requirement to register certain charges, please go to <http://www.bis.gov.uk/companycharges/requirement>. Comments are particularly invited on what charges should be registrable, the sanctions for failure to register, and the effect of registration on third parties. Views are also sought on a radical alternative approach under which the 21-day time limit for registration would be abolished.

Current requirements

12. At present, a company registered in any part of the United Kingdom that has created a charge (the “chargor”) of a type specified by statute is required to deliver to Companies House²¹ prescribed particulars of the charge²². The requirement applies wherever the charged property is situated and even if it is created by an instrument that also creates charges that are not registrable²³. However a charge is not registrable if the person entitled to the charge (“the chargee”) is the Bank of England, a central bank of another country, or the European Central Bank²⁴. Also, a security financial collateral arrangement, or a charge created or otherwise arising under such an arrangement, is not a registrable charge²⁵.

13. There is a list of the types of charge and securities which are to be registered²⁶. The list is different for companies registered in Scotland²⁷. In particular:

- only companies registered in England, Wales and Northern Ireland are required to register fixed charges over fixed assets²⁸;
- an instrument of alteration to a floating charge created under the law of Scotland is also registrable under provisions²⁹ which will remain in force until the relevant provisions of Scots law³⁰ are brought into force³¹.

14. The CLR noted that the current statutory lists do not accord with commercial practice. For example, charges are now commonly granted over expected future income from major projects while charges to secure issues of debentures are not³².

²¹ The legal requirement is expressed as a duty to deliver to the “registrar of companies”. There is a registrar for England and Wales, Northern Ireland and for Scotland. However, for the purposes of this consultation document the term “Companies House” will be used as it is a familiar shorthand term for the registrars.

²² Section 860(1), 2006 Act and the 2008 Regulations.

²³ 2006 Act, section 878(7).

²⁴ 2009 Act, section 252; section 253(3)-(6) provides that the disapplication of Part 25 of the 2006 Act by section 252 also applies to the 2007 Act.

²⁵ Regulation 4 of the 2003 Regulations.

²⁶ 2006 Act, section 860(7), for companies registered in England and Wales or in Northern Ireland.

²⁷ 2006 Act, section 878(7).

²⁸ “A charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale”: 2006 Act, section 860(7)(b).

²⁹ 1985 Act, section 466(4) and (5).

³⁰ 2007 Act, sections 38-41.

³¹ See Chapter 7 of this consultation document.

Geographical coverage

15. At present, there are differences in the scheme as it applies to companies registered in Scotland (“Scottish companies”) as compared to those registered elsewhere in the United Kingdom³³. This is because the underlying property law is different in Scotland. The Scottish Law Commission recommended “that the present requirement to register particulars of [any security rights granted by Scottish companies] with the Register of Companies should cease”³⁴. They recommended that instead:

- companies’ annual returns should include details of undischarged rights in security granted;
- a statutory duty on a company to provide details of any right in security granted since its annual return to anyone who so requests and pays the prescribed fee;
- a public right to inspect copies of security documents on payment of a prescribed fee (see paragraphs 94-95 below).

However a company may own - and charge - assets in jurisdictions other than where it is incorporated. Since 1 October 2009, there has been a single UK-wide regime for overseas companies³⁵, regardless of where in the UK the overseas company has registered a UK establishment. A scheme of registration which applies the same rules to all UK companies is expected to make it easier for those who check on the financial standing of companies to discover, cheaply and easily, whether any UK company has granted any charge that is registrable. This would not affect the requirement for the registration of the charge to be at Companies House in the jurisdiction where the company was incorporated.

Question

1.A Do you consider that the same rules should apply to all UK companies?

Registrable charges

16. The CLR recommended an alternative approach, namely that any charge created by a UK company should be considered to be registrable unless specifically excluded³⁶. The Law Commission, whose remit was restricted to companies registered in England and Wales, recommended similarly³⁷. The difference between the approach in the current law and that recommended by the CLR and the Law Commission becomes significant when a charge over a new type of asset is devised. In that case the current approach would require an

³² The CLR Report, paragraph 12.59.

³³ Chapter 1 of Part 25 of the 2006 Act applies to companies incorporated in England & Wales and Northern Ireland; Chapter 2 to those incorporated in Scotland.

³⁴ Paragraph 1.20, the Scottish Law Commission’s Report.

³⁵ The 2009 Regulations.

³⁶ The CLR Report, paragraph 12.60.

³⁷ The Law Commission’s Report, paragraph 3.16.

amendment to the list of included charges, but under the proposed approach the charge would be registrable unless a policy decision were taken to exclude it from registration.

17. The 1989 Act provided that registrable charges consisted of floating charges and those:

- on land;
- on goods or any interest in goods except if the chargee has possession;
- on goodwill, intellectual property, book debts, or uncalled share capital;
- for securing an issue of debentures.

18. Under the proposed approach there would be a single list applicable to all UK companies. It would avoid any uncertainty as to whether or not, for example, all charges over receivables are “charges on book debts of the company”³⁸ and therefore having to be registered.

PROPOSAL A

Any charge created by a UK company should be registrable unless specifically excluded.

19. The list of exclusions in Proposal B below draws on the detailed recommendations of both the CLR and the Law Commission but does not include arrangements that are not charges.

20. Case law has decided that, under the present law, charges over insurance policies are not registrable³⁹. The CLR and, in its 2002 consultation paper, the Law Commission considered that, in general, charges over insurance policies should be registrable but that there should be exceptions for marine insurance policies which insure goods which are exported. However in their final report, the only exception recommended by the Law Commission was for Lloyds trust deeds (other than a Lloyd’s deposit trust deed or a Lloyd’s security and trust deed)⁴⁰. They noted that corporate members of Lloyd’s are obliged to enter into several categories of trust deed to ensure that funds are available to pay policy-holders. These are currently registrable as charges. This leads to very large numbers of registrations that serve little useful purpose.

21. It is uncertain whether a charge over trust property is registrable when the chargor is the trustee as the requirement to register applies only to “a security on the company’s property”. At present, if filed information includes that the chargor is acting as trustee, Companies House note this on the register. The CLR implicitly and the Law Commission explicitly recommended that charges over property held

³⁸ 2006 Act, section 869(7)(f); for companies incorporated in Scotland section 878(7)(b)(vii) applies the requirement to security over “the book debts (whether book debts of the company or assigned to it)”. Paragraphs 3.43-45, The Law Commission’s Report.

³⁹ *Paul and Frank Ltd v Discount Bank (Overseas) Ltd and Board of Trade* [1967] Ch.348.

⁴⁰ Paragraphs 3.43-3.45, Law Commission’s Report.

in trust should be registrable in the same way as if the property were held beneficially⁴¹.

PROPOSAL B

The only exclusion from the requirement to register charges created by a UK company should be Lloyd's trust deeds other than a Lloyd's deposit trust deed or a Lloyd's security and trust deed.

QUESTION

1.B Under Proposal B, are there charges that are not currently registrable that would be made registrable?

22. As already noted (see paragraph 12 above), a security financial collateral arrangement, or a charge created or otherwise arising under such an arrangement, is not a registrable charge. This means that fixed charges over the following assets are not registrable at Companies House:

- shares and equivalent securities;
- bonds;
- debt instruments that are negotiable on capital markets;
- securities which are normally dealt in and which give the right to acquire any shares, equivalent securities or bonds, including title transfer financial collateral arrangements.

The exclusion of title transfer financial collateral arrangements means that there cannot be a requirement to register arrangements, including repurchase arrangements, under which the chargor transfers full ownership of the financial collateral to the chargee until the relevant financial obligations have been performed.

23. The expression "security interest" is defined by the 2003 Regulations to include a floating charge where the financial collateral charged is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral-taker or a person acting on its behalf. Legal opinion appears to be that it is unclear how many floating charges satisfy this possession or control test. Section 255 of the Banking Act 2009 allows for regulations to be made regarding financial collateral arrangements, including a power to disapply or amend other legislation. Pending any decision by HMT to enact such legislation, we would like to know the views of consultees on whether to provide an express exclusion for floating charges which include financial collateral from registration under the 2006 Act. Floating charges play an important role in infrastructure operations in the financial markets. We are therefore keen to avoid pre-judging by implication any difference of opinion on the control test point and we would like consultees to bear this in mind in considering their response to the question below.

⁴¹ Paragraph 3.113, The Law Commission's Report.

Question

1.C Do you consider that the requirement to register at Companies House should not apply to floating charges over financial collateral?

24. For our proposals relating to charges over assets for which there are specialist registries, see Chapter 7.

Automatic crystallisation

25. Automatic crystallisation clauses provide for a floating charge to become fixed (or “attached”) on the happening of a particular event. An English automatic crystallisation clause is not effective in Scotland⁴². Both the CLR and the Law Commission recommended that the particulars for registration of a charge include whether there is an automatic crystallisation clause⁴³.

26. The Law Commission also proposed that there be provision for the registration of crystallisation that has occurred as the result of an automatic clause. The Scottish Law Commission has recommended that the principle “no attachment without registration” should apply to floating charges registered in the Register of Floating Charges (see paragraphs 136-139 below)⁴⁴. The 1989 Act provided power to make regulations requiring notice to be given on the occurrence of events that affect the nature of the security under a floating charge, which would have provided the power to require notification of its crystallisation.

27. Automatic crystallisation is normally on the appointment of an administrator or administrative receiver. These appointments must be notified to Companies House⁴⁵; they are entered on the company’s record. Crystallisation in other circumstances turns the floating charge into a fixed charge. However the Insolvency Act 1986⁴⁶ provides that even if a floating charge crystallises automatically before the commencement of a receivership or liquidation, it will not be treated as a fixed charge in that receivership or liquidation. Noting that it is intended to include the existence of an automatic crystallisation clause in the particulars that have to be registered, it seems unnecessary to require registration of the crystallisation. In any event, it seems unlikely that the benefit to third parties would be sufficient to justify such a requirement.

⁴² Footnote 30 to Part 5 of the Scottish Law Commission 2007 Report on *Sharp v. Thomson* <http://www.scotlawcom.gov.uk/downloads/rep208.pdf>.

⁴³ Paragraph 12.79(h), CLR Final Report and Paragraph A.11, Appendix A “Amending the current registration scheme for company charges”, *Registration of Security Interests: Company Charges and Property other than Land – A Consultation Paper*, The Law Commission, 2002.

⁴⁴ Footnote 30 to Part 5 of the Scottish Law Commission 2007 Report on *Sharp v. Thomson* <http://www.scotlawcom.gov.uk/downloads/rep208.pdf>.

⁴⁵ Under either paragraph 46 of Schedule B1 to the Insolvency Act 1986 or section 871, 2006 Act

⁴⁶ Sections 40 and 175.

QUESTION

- 1.D Do you consider there should be a requirement that the crystallisation of a floating charge be registered within 21 days of that event? If so, on whom should the requirement fall and what should be the sanction?**

Charges on acquired property

28. The CLR did not make any recommendation relating to the requirement for a UK company to register a charge if one exists on property that it acquires. At present, the sanction for failure to register such a charge is only the criminal sanction on the company; the sanction of invalidity does not apply⁴⁷.

29. The Law Commission noted that these transactions usually relate to property for which there is a specialist register. They noted that in such cases, the transfer of ownership requires the agreement of the chargee, who normally takes a new charge against the new company; this new charge would be registrable. They considered that it was not sensible to have special provision for the few cases where this is not the case and therefore, as part of their proposals for notice-filing, recommended that the requirement be abolished⁴⁸. We consider the reasoning applies equally to the current transaction-filing system. It should be noted that under the 2009 Regulations there is no such requirement to register on overseas companies.

PROPOSAL C

The requirement to register charges existing on property acquired should be abolished.

Sanctions

Current position

30. At present, if a registrable charge created by a UK company is not registered within 21 days of its creation then:

- an offence is committed by the company creating the charge and by each of its officers in default⁴⁹; and
- the security conferred by the charge is void against a liquidator or administrator or creditor of the company⁵⁰. This consequence is known as the “sanction of invalidity”.

⁴⁷ Sanctions are considered in paragraphs 30–45 below.

⁴⁸ Law Commission’s Report, paras 3.62 & 3.63.

⁴⁹ Sections 860(4) and 878(4), 2006 Act.

⁵⁰ Sections 874(1) and 889(1), 2006 Act. These expressions include a banking liquidator and banking administrator – see Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), article 3.

If the charge is created in the UK, then the calculation of the 21 days starts the day after it is created. Otherwise, it starts the day after the instrument creating the charge would have been received in the UK if it had been despatched with due diligence by post⁵¹.

31. The sanction of invalidity does not invalidate or render void altogether a charge that is not registered in time. It remains fully valid against the company giving the charge. It is enforceable until the commencement of the winding up or administration of that company, at which time it becomes void against the liquidator or administrator. This sanction therefore ensures that it is in the interest of the chargee to make sure that the charge is registered as required.

32. Where an unregistered charge is enforced against the chargor before the commencement of its winding up or administration and the chargee has received satisfaction of his debt by way of that enforcement, the charge no longer exists and the proceeds of enforcement are beyond the reach of the liquidator, the administrator and the unsecured creditors. In effect, the benefit of the sanction of invalidity to unsecured creditors is only in the event of a liquidation or administration occurring before the charge has been enforced.

Time limit for registration

33. A radical alternative approach would be to abolish the 21-day time limit for registration. Instead, an unregistered charge would be void:

- against the liquidator, administrator or creditor (ie as now, but see Proposal E below), and
- against any charge that had been previously registered except in the case of a floating charge for which the registered particulars do not include a negative pledge clause (see paragraphs 56-57 and Proposal G below).

This approach has many attractions, particularly if combined with the proposals below for electronic registration (see Proposal J below). It would mean that:

- chargees would generally be concerned that a charge be registered as quickly as possible (but see paragraph 34 below);
- the date of creation (see paragraphs 35-36 below) would not be relevant to validity of the charge. This would remove a significant obstacle to treating legal charges over land as if registered under the Companies Act if they are registered at the Land Registry (see paragraph 123 below);
- there would be no period of invisibility (see paragraph 77); and
- there would be no such thing as “late registration” (see paragraphs 79-83 below).

34. This approach would go against the primary purpose of registration, which is to ensure public notice of encumbrances. The problem is that it would be in the interest of any chargee who is connected to the chargor, for example a director, not to register a charge unless the company is approaching insolvency. This would not

⁵¹ Sections 870 and 886, 2006 Act.

prejudice other secured creditors but a connected person might be the only secured creditor of a small company. The company would continue to trade apparently without any encumbrances – and thus protect their credit-rating. Third parties would be falsely encouraged to extend unsecured credit and prudent trade creditors might be less willing to advance credit to small and medium-sized enterprises. However, as the Law Commission pointed out, unsecured creditors are, at present, vulnerable to charges created at any time (except to floating charges created during the run-up to insolvency)⁵². If this proposal were adopted, it might be necessary to modify the sanction of invalidity (see paragraph 39 below).

Question

1.E Do you consider that the 21-day time limit for registration should be abolished? Why?

Question

1.F If the 21-day time limit for registration were abolished, do you consider there would need to be any safeguards?

Date of creation

35. If a time limit for registration is retained, then the date of its commencement is crucial. The start is the date of creation of the charge. Companies House reject a filing if it is presented outside the time limit. This is generally immediately apparent from the face of the instrument creating the charge. However it is not necessarily so: the date of its creation may be earlier than the date appearing on the document or its execution by the company may depend on fulfilment of certain conditions. Furthermore, an electronic legal charge is not a deed though it has the same effect as a deed, so it cannot be said to be “executed”. Therefore it is not always immediately evident whether a charge has been registered timeously. However, provided a conclusive certificate is issued, the charge will not be void against a liquidator or administrator or creditor of the company because of failure to register in time. While any difficulty that might arise from the date of creation being different to the date appearing on the document does not affect either the chargor or the chargee, there is a risk that third parties might suffer from a late-registered charge **not** being invalidated in the event of a subsequent liquidation or administration of the chargor – because Companies House issued a conclusive certificate notwithstanding that registration was not, in fact, within 21 days of the creation of the charge. The Land Registry relies on the conclusive certificate as it needs total assurance that the charge is not at risk of being invalidated by lack of proper registration. A description of the procedures of the English and Scottish land registries is in Chapter 7 below.

⁵² The Law Commission’s Report, paragraph 3.80.

QUESTION

1.G In practice, do third parties suffer from charges being valid because a conclusive certificate has been issued in circumstances when in fact the requirements for registration were not met within 21 days of the creation of the charge?

36. The 1989 Act addressed this issue by providing a definition of the date of creation for charges created, with different definitions according to whether the charge was created under the law of England and Wales or of Scotland⁵³. However this would not have resolved the problem of the date of creation not being visible. It might also have led to inadvertent failure to register – although this does not seem likely. We consider that any definition of date of creation for the purposes of the time limit for registration of a charge must refer to a date that is visible on the face of the instrument (if any). However, if provisions of the 2007 Act are brought into force for a floating charge under the law of Scotland, then the date of creation under Scots law will be the date of its registration (or, where relevant, the date of registration of the advance notice) in the proposed Scottish Register of Floating Charges⁵⁴.

PROPOSAL D

There should be a definition of date of creation for the purposes of the time limit for registration of a charge.

- **For a charge created under the law of England, it should be:**
 - **in the case of a charge created by an instrument in writing, the date that purports to be the date of the charge on the face of the instrument;**
 - **in the case of a charge of land created by an electronic document to which section 91 Land Registration Act 2002 applies, the date when the document takes effect; and**
 - **in any other case, the date when the chargor entered into an enforceable agreement.**

⁵³ “(2) A charge created under the law of England and Wales shall be taken to be created-
(a) in the case of a charge created by an instrument in writing, when the instrument is executed by the company or, if its execution by the company is conditional, upon the conditions being fulfilled, and
(b) in any other case, when an enforceable agreement is entered into by the company conferring a security interest intended to take effect forthwith or upon the company acquiring an interest in the property subject to the charge.

(3) A charge created under the law of Scotland shall be taken to be created-
(a) in the case of a floating charge, when the instrument creating the floating charge is executed by the company, and
(b) in any other case, when the right of the person entitled to the benefit of the charge is constituted as a real right.” (section 414, Companies Act 1985 as would have been inserted by the 1989 Act).

⁵⁴ Section 252(2) of the 2009 Act amends the 2007 Act so that where floating charges are granted to a central bank, they are deemed to have been created when the document creating the charge is executed (as opposed to when registered in the Scottish Register of Floating Charges).

- **For a charge created under the law of Scotland, it should be:**
 - **in the case of a floating charge, the date of registration in the Scottish Register of Floating Charges (or, if these provisions are not in force, the date the instrument is executed by the chargor); and**
 - **in any other case, when the chargee acquires a real right.**

Sanction of invalidity

37. As noted by the CLR⁵⁵, the sanction of invalidity⁵⁶ underpins the present system. It ensures that the chargee has a strong commercial interest in ensuring that the charge is registered. In consequence there is a very high level of compliance with the requirements to register charges.

38. The CLR recommended that a charge should not be made void by insolvency proceedings that commence after the disposal of the charged property⁵⁷. The Law Commission recommended that an unregistered charge be ineffective against a liquidator or administrator on insolvency and against execution creditors⁵⁸. Rather than “execution creditors”, the 1989 Act would have provided for ineffectiveness against “any person who for value acquires an interest in or right over property subject to the charge”.

PROPOSAL E

The sanction of invalidity should be modified so that an unregistered charge is ineffective against a liquidator or administrator on insolvency and against execution creditors (under Scots law, creditors who have executed diligence).

39. If the 21-day time limit for registration were to be abolished (see paragraphs 33-34 above), then any unregistered charge would be void:

- against the liquidator, administrator or execution creditor, and
- against any charge that had been previously registered except in the case of a floating charge for which the registered particulars do not include a negative pledge clause (see paragraphs 56-57 and Proposal G(g)(ii) below).

There might need to be additional safeguards to protect unsecured creditors. For example, an unregistered charge created in the run-up to insolvency proceedings might be invalid.

40. The 1989 Act also provided for the situation where insolvency proceedings are begun or interests acquired before expiration of the period for registration of the

⁵⁵ The CLR Report, paragraph 12.17.

⁵⁶ As described in paragraphs 30-32 above.

⁵⁷ The CLR Report, paragraph 12.53.

⁵⁸ The Law Commission’s Report, paragraph 3.78.

charge: the charge would be void if either event occurred between the creation of the charge and its timeous registration⁵⁹.

QUESTION

1.H Is it necessary for the Act to provide for the situation where insolvency proceedings are begun 21 days or less after the creation of a charge?

Criminal sanction

41. Both the CLR and the Law Commission recommended the abolition of the criminal sanction on the company and its officers⁶⁰. In the case of an overseas company, failure to register a charge is not an offence under the 2009 Regulations. Abolition of the criminal sanction would make registration of a registrable charge a commercial decision for the chargee.

42. As part of the proposed regime for electronic registration of charges at Companies House, it is proposed that only the chargor be able to register a charge (Proposal J). If this proposal is adopted, the criminal sanction will need to be retained.

Money secured becomes payable

43. As already noted (see paragraph 30), failure to register a charge makes it void against a liquidator, administrator or creditor. In these circumstances, the money secured by it immediately becomes payable⁶¹. There is some uncertainty as to whether this means the money secured becomes payable 22 days after the creation of the charge or after the appointment of a liquidator or administrator. Both the CLR and the Law Commission recommended that this civil sanction be abolished⁶². The Law Commission recommended that chargees should be free to contract that the money should be repayable in the event of non-registration⁶³.

44. On the basis that this provision means that the whole of the sum secured becomes immediately repayable on demand if not registered within 21 days, it provides an incentive to the chargor to register.

45. Clarity is required. Either the provision should be abolished or it should be clear that it means that the sum secured is repayable on demand if the charge is not registered within 21 days. We consider it should be abolished if, as now, the chargee is able to register the charge; otherwise it should be clarified (see Proposal J and its alternative).

⁵⁹ Section 399, 1985 Act as would have been provided by 1989 Act.

⁶⁰ The CLR Report, paragraph 12.73, and the Law Commission's Report, paragraphs 3.77-3.78.

⁶¹ Sections 874(3) and 889(2), 2006 Act..

⁶² The CLR Report, paragraph 12.77 and the Law Commission's Report, paragraph 3.78.

⁶³ Paragraphs 3.77–3.78, Law Commission's Report.

Effect of registration on third parties

Validity against a buyer

46. At present, a charge that is not properly registered in accordance with the provisions of Part 25 will be invalid against the liquidator, administrator or creditors. (The rules on validity do not affect the priority of valid charges; priority is irrelevant to an invalid charge.) Under Proposal E an unregistered, but registrable, charge will be ineffective against a liquidator or administrator on insolvency and against execution creditors. The position of other parties is not affected by the registration of the charge or by failure to register it. The CLR did not make proposals relating to effects of unregistered charges. However the Law Commission consulted on the issue. In the light of responses, the Commission recommended that⁶⁴ buyers of property:

- that is the subject of an unregistered fixed charge should take free of the charge unless they know of the charge; and
- that is the subject of an unregistered floating charge should take free of the charge if the transaction is in the ordinary course of the chargor's business unless they know of the charge.

Clearly this should apply only if the asset is not subject to rules of a specialist register in such circumstances. Others argue that a buyer of property subject to an unregistered charge should always take free of the charge as the chargee has failed to protect himself by ensuring that the charge has been registered.

QUESTION

1.1 Should the buyer of property subject to an unregistered charge ever take free of the charge? Should there be any exceptions?

Notice to third parties

47. Although the main objective of the system is to give public notice of the possible existence of a security interest and thus prevent the concealment of secured debt, at present there is no statutory provision as to who is deemed to receive notice. The CLR reported that the courts have taken the view that, if the legislature has made information about a company available to all at a public office, then it is the responsibility of any person dealing with the company to avail himself of that information⁶⁵.

48. The CLR noted that Diamond had recommended that the only person deemed to have notice of a registered charge should be a subsequent chargee who takes a registrable charge⁶⁶. This is the approach that was taken in the 1989 Act⁶⁷; these provisions were not brought into force.

⁶⁴ Paragraphs 3.213-3.216, Law Commission's Report

⁶⁵ Paragraph 11.9.5, The CLR Report.

⁶⁶ Paragraph 3.78, *Registration of Company Charges*, CLR 2000 consultation document..

⁶⁷ 1989 Act, section 416.

49. The CLR sought views on who should be deemed to have notice of a registered charge⁶⁸. All the respondents agreed that those subsequently taking registrable charges should be deemed to have notice of a prior registered charge. Respondents differed as to which others, if any, should also be deemed to have notice: some considered it should be all creditors; some all those acquiring any proprietary interest in the assets of the chargor; some all purchasers where the transaction lies outside the normal course of business. The CLR recommended that creditors taking registrable charges, and no one else, be deemed to have prior notice. They also recommended that constructive notice should apply to all the information filed⁶⁹. The position of liquidators and administrators would not be affected by this proposal.

50. On the other hand, the Law Commission⁷⁰ recommended that:

- a transferee (other than a secured party) of collateral that is subject to an unregistered charge which is a fixed charge should take subject to the charge unless the chargee has authorised the sale or other disposition, and
- a transferee (other than a secured party) of collateral subject to an unregistered charge which is a floating charge, who acquired the collateral in a transaction which was in the ordinary course of the transferor's business, should take free of the charge unless the transferee knew that the sale was in breach of the terms of the charge.

But it is clear that the Commission were principally concerned that the uncertainty of the present law should be removed.

PROPOSAL F

- (i) A person taking a charge over a company's property should be taken to have notice of any previous charge registered at the time the charge is created; and**
- (ii) No other person should be taken to have notice of a registered charge.**

⁶⁸ Question 42, CLR, *Registration of Company Charges*.

⁶⁹ The CLR Report, paragraphs 12.50 & 12.51.

⁷⁰ The Law Commission's Report, paragraphs 3.218 and 3.221.

Procedures for Registering Charges

If you would like to join in an internet discussion of the issues relating to the requirement to procedures for registering charges, please go to <http://www.bis.gov.uk/companycharges/procedures>. Comments are particularly invited on what particulars should be filed and on the conclusive certificate. Views are sought on alternative proposals: one would allow electronic registration but would require safeguards to minimise the risk of malicious registration of a non-existent charge.

Current Procedures

51. At present, a charge can be registered by either the chargor or any person interested in it (in effect, the chargee). In these circumstances, the person registering the charge may recover the cost of the registration fee (if any) from the company⁷¹. In practice, with very few exceptions, charges are registered by chargees.

52. For registrable charges created by a UK company, particulars of the charge must be delivered to Companies House together with the instrument creating the charge (for charges created by companies registered in Scotland, a certified copy of the instrument) within 21 days of the creation of the charge. If the instrument is in a language other than English, a certified translation into English must also be delivered to Companies House⁷². The sanction of invalidity takes effect if the procedures for registering the charge are not completed within 21 days of its creation.

53. The required particulars⁷³ are:

- (a) the date of the creation of the charge;
- (b) a description of the instrument (if any) creating or evidencing the charge;
- (c) the amount secured by the charge;
- (d) the name and address of the person entitled to the charge;
- (e) short particulars of the property charged; and
- (f) in the case of a floating charge created by a Scottish company, any negative pledges (see paragraphs 56-57 below).

The form must also include both the registered name and the registration number of the company; if either the name or number is missing or if they do not match the Companies House record, then the form will be rejected⁷⁴.

⁷¹ Section 860(1), 2006 Act applies to companies incorporated in England and Wales or Northern Ireland; section 878(1) to companies incorporated in Scotland.

⁷² 2006 Act, section 1105(2)(c) .

⁷³ As prescribed by the 2008 Regulations.

⁷⁴ Section 1068, 2006 Act provides power for the Registrar to require the inclusion of the name and registration number of the company as a matter of authentication of the document.

54. Companies House check that the form has been completed, enter the particulars in the register, and return the instrument to the presenter. They issue to the presenter a certificate, commonly described as the “conclusive certificate”, that is conclusive evidence that the requirements for registration have been satisfied⁷⁵. (The conclusive certificate is considered in paragraphs 66-72 below.) The public record at Companies House includes a record of conclusive certificates issued⁷⁶.

55. The current system for registration of charges is said to be outdated, slow and laborious. It hinders the introduction of electronic filing for charges. It protects those who make errors in filing brief particulars from the consequences.

Negative pledges

56. Floating charges usually contain negative pledges, ie a restriction on the chargor’s ability to create charges with higher or equal priority. Under Scots law, a negative pledge is only effective if registered. For Scottish companies, any negative pledge must be included in the particulars of the floating charge entered on the Register of Charges held at Companies House⁷⁷. At present, this is achieved by the requirement that the particulars for floating charges created by Scottish companies to include notice of a negative pledge. There is not a similar requirement for other companies but, as the CLR noted, publicity for a pledge is useful information to prospective chargees. They recommended that there be provision for the voluntary registration of negative pledges.

57. Under the 2007 Act, the valid creation of a floating charge under Scots law will be by registration in a new register, to be called the Register of Floating Charges, maintained by the Keeper of the Registers of Scotland. In the event that these provisions of the 2007 Act are brought into force, it will no longer be necessary for company law to require the registration of negative pledges created by Scottish companies. In that event, there will no longer be any need to have different provision for Scottish companies. If not, the provision will have to be retained for Scottish companies at least. It would have to be retained for all companies, if the 21-day time limit were to be abolished. In any event, it is proposed that the same requirements apply to all UK companies. Proposal G(g)(ii) below makes the existence of a negative pledge one of the particulars that must be provided when registering a charge.

⁷⁵ 2006 Act, sections 869 and 865.

⁷⁶ 2006 Act, section 1080(1)(b). (Section 1080(1) as originally enacted was amended by the 2006 Act (Part 35) (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (SI 2009/1802).).

⁷⁷ Regulation 3 of the 2008 Regulations.

Proposed procedures

Particulars

58. The CLR recommended that the particulars that must be registered be⁷⁸:

- (a) the chargor's name and Companies House registration number;
- (b) whether the chargor is acting as trustee of the property;
- (c) the chargee's name and, if a registered company, its Companies House registration number;
- (d) the date of the creation of the charge;
- (e) the property or classes of property charged;
- (f) the nature of the charge, i.e. whether it is a fixed or floating charge;
- (g) whether the charge is in respect of a monetary obligation and, if so, the amount secured, e.g. whether "all monies" or a specific figure or other variable obligation;
- (h) whether there is an automatic crystallisation clause;
- (i) in Scotland only, whether the charge is subject to a negative pledge;

and that there should be provision voluntarily to include:

- (j) in England only, whether the charge is subject to a negative pledge; and
- (k) whether the charge is a market charge within the meaning of section 173 of the Companies Act 1989.

59. The Law Commission⁷⁹ differed from the CLR only so as not to require whether the chargor is acting as trustee for the property and to suggest:

- provision so that a chargee can disclose that it is a trustee acting for a group of lenders;
- the option of giving the name and address of an agent for the chargee instead of the chargee's name and address;
- omission of the statement whether the charge is in respect of a monetary obligation, and if so, the amount secured;
- inclusion of either the period of the charge or a statement that it is for an indefinite period.

They considered that there should be no word limit on the description of the collateral (ie "the property or classes of property charged" in the CLR recommendation). They considered there might be also an option of a series of tick-boxes to describe the collateral, (eg "all present and after-acquired property").

60. We understand that the present requirement for "short particulars of the property charged" is often met by statements such as "as listed in the Instrument". The instrument may list several hundred items. On the one hand, such statements

⁷⁸ The CLR Report, paragraph 12.79.

⁷⁹ Paragraphs 3.97-3.120, the Law Commission's Report.

are not very helpful to those inspecting the register. On the other hand, brief descriptions may mislead. This is of great importance as the conclusive certificate issued on registration is evidence that the requirements for registration have been met by the charge as created, rather than as summarised on the register⁸⁰ (see paragraphs 66-72 below). The main purpose of the scheme for registration of charges is to make public if a company has used certain assets to secure borrowing. This ensures that potential creditors and customers do not act on the basis that the company has unencumbered rights over assets which have been charged. The particulars would be more useful than at present if, as CLR recommended, a charge were valid only for the property or classes of property included in both the filed particulars and the charge instrument⁸¹.

61. For most forms delivered to Companies House, the requirement for the name and number of the company is part of the authentication requirements⁸². However, so as to ensure that the sanction of invalidity is a proportionate sanction, we consider the registered name and registration number should be explicitly required in order to register the charge.

62. The Law Commission's proposal that the name and address of the chargee's agent be given instead of the chargee's own was in response to concern that lenders to companies conducting controversial business, such as research on animals, may be subject to intimidation. Directors may apply for higher protection for their usual residential addresses, ie so that these addresses are not disclosed by Companies House to credit reference agencies, if the company's activities put its directors at risk of violence or intimidation⁸³. A company is exempt from the requirement to display a sign with its name at some of its premises (the sign is always required at the registered office and its "single alternative inspection location") if all its directors who are individuals have been granted such higher protection⁸⁴. One option is that the substitution of the name and address of the chargee's agent for the chargee's should only apply in such cases. On the other hand, noting the Law Commission's recommendation on a chargee acting as trustee and also that there is no requirement to notify any change in the chargee, it seems unnecessary to impose any restriction on giving of an agent's name and address.

63. Neither CLR nor the Law Commission recommended that the particulars include, as at present, a description of the instrument (if any) creating or evidencing the charge. Companies House guidance gave the following examples of descriptions: Trust Deed, Debenture, Mortgage, Legal Charge. It is arguable that this is not useful information to third parties. However, it is likely that third parties would find it useful to know that there was no instrument.

⁸⁰ In *National Provincial and Union Bank of England v Charnley* [1924] 1 KB 431, the Court of Appeal held that as the certificate identified the instrument of charge, and stated that the mortgage or charge thereby created had been duly registered, it must be understood as certifying the due registration of all the charges created by the instrument, including that of the chattels [which were not included in the registered particulars].

⁸¹ The CLR Report, paragraph 12.80, *op cit*.

⁸² Section 1068, the 2006 Act, provides power to impose requirements as to the form, authentication and manner of delivery of documents.

⁸³ Regulations 5-7 of the Companies (Disclosures of Address) Regulations 2009 (S.I. 2009/214).

⁸⁴ Regulation 3 of the Companies (Trading Disclosures) (Amendment) Regulations 2009 (S.I. 2009/218).

64. The CLR did not include the period of the charge amongst the particulars they considered should be mandatory if the present system were retained⁸⁵. The Law Commission considered that it should be possible for filings to be for a fixed duration⁸⁶ for reasons relevant to notice-filing rather than the current scheme.

PROPOSAL G

The required particulars should be:

- (a) The registered name and registration number of the company that created the charge;**
- (b) the date of the creation of the charge and, in the case of a Scottish floating charge, the date of registration of any advance notice;**
- (c) whether there is an instrument creating or evidencing the charge. If not, how the charge was created (eg by registration in the Scottish Register of Floating Charges);**
- (d) the name and address of the person entitled to the charge or his agent with it being disclosed if:**
 - (i) an agent for the chargee; or**
 - (ii) a trustee for a group of lenders;**
- (e) the classes of property charged, say land; ships or aircrafts; other corporeal property; book debts; goodwill or any intellectual property;**
- (f) whether the property charged includes after-acquired property and, if so whether it is over all present and after-acquired property.**
- (g) in the case of a floating charge, whether there is:**
 - (i) an automatic crystallisation clause;**
 - (ii) a negative pledge.**

It should be possible for the registration form to provide tick boxes for the main possible answers to most of these questions, say (c), (e) and (g).

65. In the case of most registered charges, the amount secured is given by some variant of “all monies owed”. But, as respondents to the CLR consultation noted, charges sometimes secure obligations other than the payment of money. The British Bankers Association suggested that the requirement should be to make clear whether the security is given for “all monies”, or for a specific figure, or for another variable obligation.

QUESTION

2.A Do you consider that all the proposed particulars (ie Proposal G (a)-(g)) are essential information about a company’s charge that should be available from Companies House? Is there any other information you consider should be required?

⁸⁵ Paragraph 12.79, the CLR Final Report

⁸⁶ Paragraph 3.110, the Law Commission’s Report.

Conclusive certificate

66. At present, the conclusive certificate is sufficient evidence for the courts that the requirements of the 2006 Act for the registration of a charge have been satisfied⁸⁷. This means that in the event of the chargor's insolvency, the charge will not be invalid against a liquidator, administrator or creditor for want of registration under the 2006 Act. It will not be invalid even if it transpires that it was not filed within the time limit or that the brief particulars were inaccurate.

67. In the case of a legal charge over land, the Land Registry currently relies upon the conclusive certificate. This is because the registration of a legal charge at the Land Registry is in effect a guarantee that the proprietor of the charge has full power to deal with the charge and (in the event of default) with the land charged by it.⁸⁸ This guarantee provides an assurance to purchasers of land that is considered to be important to the efficient working of the conveyancing market. The possibility that the charge might be void against a liquidator, administrator or creditor is incompatible with it. This means that in practice registration at Companies House has to precede registration at the Land Registry. At present, in the event that there is not sufficient evidence that the Companies Acts' requirements for registration have been satisfied, the Land Registry puts a note on the register to that effect.⁸⁹ This qualifies the guarantee and warns those dealing with the chargee that they need to check whether the charge has been correctly and timeously registered at Companies House. As at 25 January 2010, of the 847,549 company charges on the Land Register 3,219 had such notes.

68. The provisions relating to the conclusive certificate impose a legal obligation on Companies House to check that:

- the company named in the brief particulars is the chargor;
- the registration of the charge is within 21 days of its creation. But, while normally straightforward, there can be instances where the date of creation is not self-evident – this is addressed by Proposal D above; and
- the brief particulars filed are an accurate summary of the charge document. This may require subtle legal judgement beyond officials' capability.

69. The CLR recommended that entry on the Companies House register should be conclusive evidence of the date of registration only, while the Law Commission recommended that Companies House should not check the accuracy of the particulars or issue a conclusive certificate of registration⁹⁰. The 1989 Act would have provided that the conclusive certificate would have been evidence that the specified particulars or other information had been delivered to the registrar no later than the date stated in the certificate. It also provided that the certificate would not be issued automatically.

⁸⁷ Sections 869(6) and 885(5), 2006 Act.

⁸⁸ Land Registration Act 2002, ss.26 and 52.

⁸⁹ In accordance with rule 111(2), Land Registration Rules 2003

⁹⁰ Paragraph 3.76, CLR Final Report.

70. The 2006 Act has implemented the CLR recommendation that it be an offence knowingly or recklessly to deliver false information to Companies House⁹¹. Noting that any inaccuracies in the particulars of a charge are not likely to be pertinent until the chargor goes into liquidation, the CLR recommended that the civil liability for the accuracy of the particulars should lie upon the chargee, irrespective of who actually filed the particulars. The CLR also recommended that defective particulars should not invalidate the charge entirely: rather a charge should be valid for the property or classes of property included in both the filed particulars and the charging instrument. The Law Commission recommended similarly.

PROPOSAL H

Registration of a charge should only prevent its invalidity for the classes of property included in both the brief particulars and the instrument creating the charge (if any).

PROPOSAL I

Companies House should issue a certificate that is conclusive evidence:

- **of the identity of the chargor;**
- **of the date of registration of the charge whose brief particulars are on the register;**
- **that the charge was registered within 21 days of its date of creation;**
and
- **of the class(es) of charged property.**

71. Proposals H and I will mean that the conclusive certificate will continue to be conclusive evidence that the Companies Act requirements for registration of the charge have been satisfied. It will be sufficient evidence that the charge will not be void (so far as any security on the company's property or undertaking is conferred by it) against a liquidator, administrator or execution creditor. The Land Registry will, as now⁹², require the conclusive certificate in order to provide the register of title. The Scottish Land Registry similarly relies on the conclusive certificate but the procedures are different (see paragraphs 131-132 below). It is not possible for the Keeper of the Registers of Scotland to complete her procedures for the registration of title of Scottish land until she receives the conclusive certificate.

QUESTION

2.B Would the conclusive certificate still be needed for any purpose other than registration of land if the information on the public record were sufficient evidence for the courts of the facts in the conclusive certificate.

72. If a conclusive certificate were not supplied to the Land Registry, then it would enter a note stating that the charge may not have been properly registered

⁹¹ Section 1112, implementing the recommendation in paragraph 11.48 of the CLR Report.

⁹² Rule 111, Land Registration Rules 2003.

under the Companies Act 2006. The consequence of such a note is that persons dealing with the chargee have to go behind the register of title to assess whether the charge has been correctly and timeously registered at Companies House. This affects purchasers from the chargee, lenders to such purchasers and to the chargee, and the Land Registry when registering a disposition in their favour. This increases the cost of conveyancing and reduces the value of the land register as a record of title. It might be argued that this means that it will be in the chargee's commercial interest to ensure that the conclusive certificate is supplied to the Land Registry.

QUESTION

2.C What would be the impact on chargees of land and those dealing with them if registration of a legal charge at the Land Registry often incorporated a note that the charge may have not been properly registered under the Companies Act?

QUESTION

2.D Apart from the consequences for the Land Register, what would be the effects of the proposed changes relating to conclusive evidence?

Instrument creating the charge

73. At present, the instrument creating the charge (in Scotland, a certified copy) must be delivered to Companies House in order to register the charge. As already explained (see paragraph 52 above), the instrument is returned to the presenter together with the conclusive certificate. The instrument is not filed at Companies House. Both the CLR and the Law Commission rejected the option of requiring the instrument creating the charge to be filed. There would be real practical problems with such a requirement. However there is a right to inspect such instruments at the chargor's registered office or, if it has so opted, its "single alternative inspection location" (see paragraphs 94-95 below).

74. Both the CLR and the Law Commission recommended that notification of the particulars should be sufficient to effect the registration of a charge, ie that there should no longer be a requirement to send to Companies House either the instrument creating the charge or a certified copy of the instrument⁹³. This would only be possible if Proposal I above relating to the conclusive certificate and either the option of abolishing the time limit for registration or Proposal D relating to the date of creation were to be adopted.

75. Under the current scheme, electronic registration of charges at Companies House would be possible if neither the instrument nor a certified copy were required to be delivered with the brief particulars. However there would be a risk of malicious registration. We do not consider the offence of knowingly or recklessly delivering to Companies House a document that is misleading, false or deceptive in

⁹³ The CLR Report, paragraph 12.82; the Law Commission's Report, paragraph 3.76.

a material particular⁹⁴ would be sufficient protection. We understand that there has been a problem with vexatious filing in both the United States and Canada. In the light of these experiences, the New Zealand Personal Property Securities Register has various safeguards including:

- a requirement that the filer be registered;
- a verification statement being sent to the chargor;
- the Registrar having power to remove data if satisfied that the data is frivolous or vexatious.

These safeguards reduce the risk. However we are not convinced that this would be sufficient as the impact on a particular company of a vexatious filing could be both serious and intentional.

76. A simpler, cheaper guard against malicious registration would be to provide that only the company creating the charge may register it. This should not disadvantage the chargee as it would be possible to make timely filing a condition of the loan. In addition, as an additional safeguard for the chargee, the loan should be repayable if the charge is not registered by the chargor within 21 days of its creation. So that chargees can insist that a charge is registered promptly, this provision would be retained even if the time limit for registration were abolished (see paragraphs 33-34 above).

QUESTION

2.E Do you consider there is a better way of preventing malicious registration than requiring a charge to be registered by the chargor? What?

77. Electronic registration at Companies House would make it practicable to shorten the period for registering the charge and thus the period during which a charge will not be visible to those searching the register. (For matters other than charges, the usual time limit for filing with Companies House is within 14 days of the event triggering the requirement to file.) Under the current system, the period of invisibility may be longer than 21 days as the procedures for registration mean there is a period between the document being filed and the charge being entered on the register. This invisibility period means that the public record cannot provide total assurance that any registrable existing charge over an asset will be invalid against liquidators, administrators and creditors in the event of the company's insolvency. However respondents to previous consultations have made clear that the invisibility period almost never causes a problem in practice; lenders can be protected by the terms of the loan and its disbursement.

QUESTION

2.F Does the requirement to deliver the charge document reduce the risk of malicious registration of a non-existent charge?

⁹⁴ 2006 Act, section 1112.

QUESTION

2.G What would be the advantages of electronic registration of charges? In particular, how would the cost of registration be affected?

QUESTION

2.H If electronic registration of charges were possible, should the time limit for registration be reduced to 14 days?

PROPOSAL J

- (a) Abolition of the requirement for the instrument (or a certified copy) to be delivered to the Registrar.**
- (b) Introduction of a requirement that only the company that created a charge may register it.**
- (c) If the charge is not registered within 21 days of its creation, it should be repayable on demand.**
- (d) The civil liability for the accuracy of the particulars should lie with the chargor.**

78. Proposal J would be a radical change to the scheme. We favour it as we believe it would make registration easier for all concerned; in particular, electronic registration of a charge would be possible. The alternative is below. This takes account of responses to previous consultations showing that most chargees would prefer to deliver a certified copy rather than the original instrument when filing a charge. Electronic registration would still be possible if a pdf copy were acceptable. In any event, the instrument (or the copy) would be returned. Under this alternative, it would not be necessary to retain the criminal sanction for failure to register the charge (see paragraph 75 above).

ALTERNATIVE TO PROPOSAL J

- (a) Either the instrument creating the charge or a certified copy should be required to be delivered to Companies House for registration of the charge - which is filed being the decision of the person filing.**
- (b) Companies House should check the instrument (or certified copy) to ensure that the name of the chargor is the same as that in the particulars filed. The instrument should then be returned to the person who filed the particulars.**
- (c) The civil liability for the accuracy of the filed particulars, including the date of creation and the class(es) of property charge, should lie with the chargee at the time of the creation of the charge.**
- (d) The criminal sanction for failure to register a charge should be repealed.**

QUESTION

- 2.1 Under the alternative to Proposal J, should it be possible to deliver an electronic pdf copy of the charging document instead of the original or a certified copy? Or would this bring a significant risk of fraud?

Late registration

79. At present, if a registrable charge is not registered within 21 days of its creation, either the chargor or the chargee may apply to the court for an order extending the period for the registration of the charge. In the 10 months to January 2010, 2,168 filings of charges created by GB companies were rejected because they were made more than 21 days after of the date of creation; this was 1.7 per cent of the total⁹⁵. In practice, rather than making an application to the court if the 21 day time limit is missed, a new charge is normally created. In the same 10 months, 14,037 filings were rejected for other reasons (eg missing information): it is likely that in most of these cases a new charge was created. However the creation of a new charge requires the co-operation of the chargor. This might not be forthcoming if there were no sanction against the chargor. If the abolition of the 21 day time limit for registration were to be adopted (see paragraph 33 above), then there would be no late registration.

80. The terms of the order granted by the court will depend on whether the company is solvent: if it is in liquidation or in administration (ie if an insolvency event has occurred), special terms will apply. Otherwise the court will allow registration on terms that do not prejudice rights acquired by either secured or unsecured creditors between the dates of the creation and registration of the charge. But if an insolvency event has occurred, then the court may issue a order⁹⁶ which extends the filing period; with a proviso to the effect that if the company were to be wound-up or placed into administration within a specified period (usually 28 days) the company, acting by any liquidator, or the administrator, or any unsecured creditor of the company, are at liberty to apply to discharge or vary the terms of the order within a further period. In these circumstances, the court also directs that the Registrar will not issue a conclusive certificate of registration until satisfied that no application has been made to vary or discharge the extension of time order by a liquidator or administrator within such further period.

PROPOSAL K

There should be provision so that in the event of a late registration as directed by a court, the conclusive certificate is not issued until satisfaction of any timing condition provided by the court.

81. The CLR were concerned that late registration be possible without application to the court provided that at the time of registration no winding-up petition has been presented and no meeting has been convened to pass a

⁹⁵ 124,373 filings accepted.

⁹⁶ Known as "Re Charles orders" following case of *Re L H Charles & Co* [1935] WN 15.

resolution for a creditors' voluntary winding-up petition. In the event of late registration, the charge should be treated from then on as if it were registered within time, save that it should rank behind any prior registered charges.

82. The Law Commission agreed with this approach; they proposed that a late registered charge should be void against the liquidator, administrator and other creditors where it is registered following the onset of insolvency. They were also concerned lest provision for late registration resulted in "connected persons" delaying registration of charges⁹⁷.

83. Section 893 does not provide the power to make a late registered charge rank behind prior registered charges as this is a matter of the law on priorities. This means that this approach is not possible. We therefore do not propose to make late registration possible without application to the court.

Changes to particulars

84. Any addition to the property charged or change in the nature of the charge results in the creation of a new charge. The requirement to register applies to the new charge. The consequences of other changes are considered below.

85. Under the Companies Act 2006, there is no requirement to register any change in the mandatory particulars for a charge, even where the charge has been assigned to a new chargee or a ranking statement, such as a negative pledge, has been added. This information may be useful – in the case of assignments, particularly to the chargor. However, CLR considered that information should only be required if its provision is in the public interest and compliance can be enforced. They therefore concluded that there should not be a requirement to notify any alteration to a charge; they recommended that it be possible to make such notifications voluntarily.

PROPOSAL L

There should be provision for:

- (i) the chargee voluntarily to file changes relating to the person entitled to the charge; and**
- (ii) the chargor to be required to file the addition of a negative pledge.**

Memorandum of Satisfaction

86. At present, a memorandum of satisfaction in whole or in part may be filed. In the case of a floating charge created by a Scottish company, but not otherwise, the memorandum must be accompanied either by a supporting statement from the

⁹⁷ Paragraphs 3.79-3.85, Law Commission's Report.

chargee or, if that cannot be readily obtained, a direction from the court dispensing with the need⁹⁸.

87. The registration of charges benefits companies as it facilitates their borrowing. However the continuation on the public record of details of a charge that has been satisfied has the opposite effect. It is important therefore for chargors that it be possible to file a memorandum of satisfaction or of partial satisfaction. As this information is not needed to protect third parties, the CLR recommended that this filing should continue to be voluntary.

88. It is essential to prevent a memorandum of satisfaction being filed fraudulently. The procedure recommended by the CLR involved the chargee's signature being required in all cases with the chargor having the right to apply to the court for an order if the chargee refuses and, in such circumstances to be indemnified for costs by the chargee. The Law Commission's proposals for notice filing included a recommendation that is relevant. Proposal M below is based on their recommendation⁹⁹.

PROPOSAL M

There should be provision for a memorandum of satisfaction in whole or in part to be filed by the chargee. On satisfaction of the terms of the charge, the chargor should have the right to demand that the chargee files a memorandum of satisfaction. The chargee would be required either to make the appropriate filing within 15 days of the chargor's demand or to commence court proceedings. In the event that the chargee has neither made the filing nor obtained a court order by the end of 90 days (or such longer period as the court may direct), then the chargor can make the filing.

Public access to information about companies' charges

If you would like to join in an internet discussion of the issues relating to public access to information about companies' charges, please go to <http://www.bis.gov.uk/companycharges/access>. Comments are particularly invited on the obligations on companies.

Companies House

89. All documents on the public record¹⁰⁰ (known as "the register") are now stored electronically. How the information is presented is an operational decision for Companies House. It changes from time to time, taking account of the views of their User Groups and developments in technology. Information, including that on charges is made available:

- through Companies House Information Centres.

⁹⁸ Section 887(2), 2006 Act.

⁹⁹ Paragraph 3.133-3.137, The Law Commission's Report.

¹⁰⁰ Section 1080, the 2006 Act, requires "the register" to include the information contained in documents delivered to the registrar under any enactment, certificates of incorporation and conclusive certificates.

- through copies ordered from Companies House Contact Centre, delivered by e.mail, fax or post
- online through WebCheck
- online through the subscription service www.companieshousedirect.gov.uk;
- through the Companies House DVD ROM Directory;
- through a bulk contract.

90. The basic company details and a “company mortgage index” are available free through both Companies House Direct and Companies House Information Centres. (Annex B has examples.) The company details include the total number of charges registered (or a statement “in excess of 300 charges registered”) broken down into outstanding, satisfied, and part-satisfied. The company mortgage index includes the following for each charge:

- description (eg floating charge, debenture, legal charge). For those inspecting the register online, the description includes a link to the “Mortgage Details”;
- person(s) entitled;
- status (ie outstanding or part-satisfied or satisfied);
- date of creation;
- date of registration.

In addition to the information in the company mortgage index, the mortgage details for each charge, for which a fee of £1 is charged, includes:

- acquisition date;
- form type;
- amount secured;
- short particulars;
- forms registered against the charge (eg memorandum of satisfaction).

91. The company details and company mortgage index are also available free across the internet through WebCheck. However the details on WebCheck at present do not include a summary of the company’s charges. It is possible to order copies of filed documents, at a £1 each, from a chronological list. A company report, also costing a £1, is also available which includes the information in the company mortgage index.

92. There is a statutory requirement under which Companies House must keep a separate “Register of Charges” for each company with specified information¹⁰¹. For most charges, this information is:

- the date of creation;

¹⁰¹ Sections 869 & 891, 2006 Act.

- the amount secured;
- short particulars; and
- the persons entitled.

The Register of Charges for each company may be inspected, in hard copy only, at the branch of Companies House where the company was incorporated; hard copies can be provided by paper or fax. In practice, users appear to use the company mortgage index rather than the statutory Register of Charges.

93. The power to treat charges registered at a specialist register as if registered at Companies House refers to this “Register of Charges”. It would be easier to implement any information-sharing arrangements if the particulars to be placed on the Register of Charges were the same as the information in the statutory particulars (see Proposal G).

QUESTION

3.A What use do you make of information about company charges held at Companies House?

QUESTION

3.B How often do you access information about company charges:

- through Companies House Information Centres;
- through copies ordered from Companies House Contact Centre
- online through WebCheck
- online through the subscription service www.companieshousedirect.gov.uk;
- using the Companies House DVD ROM Directory;
- through a bulk contract;
- in the statutory “Register of Charges”?

PROPOSAL N

The requirement for Companies House to maintain a “Register of Charges” for each company should be revised so that the particulars entered are the filed particulars of each charge.

Companies’ own registers

94. Limited companies are required to keep a register with basic information (a short description of the property charged, the amount of the charge and the names of the chargees) for every charge over their property, whether or not the charge is registrable at Companies House¹⁰². The 2006 Act provides a public right to inspect

¹⁰² Sections 875, 876, 890 & 891, 2006 Act.

both this register of charges and, for all companies, copies of the instruments creating the charges¹⁰³.

95. Both the CLR and the Law Commission recommended abolition of the requirement for companies to maintain registers of their charges¹⁰⁴. They both pointed out that compliance with this requirement appears to be poor. The CLR recommended that a company's members and creditors should continue to have the right to inspect copies of the instruments creating a company's charges.

QUESTION

- 3.C (i) How often do you inspect a company's own register of its charges?**
- (ii) If you represent a company, how often has someone sought to inspect the company's own register of charges?**
- (iii) How would you be affected by abolition of the requirement for a company to keep a register of its charges?**

QUESTION

- 3.D (i) How often do you inspect the instruments creating charges of a company of which you are not a member or creditor?**
- (ii) If you represent a company, how often has someone who is not a member or creditor of the company sought to inspect an instrument creating a charge?**
- (iii) How would you be affected by abolition of the right for anyone other than a member or creditor to inspect a company's instruments creating charges?**

PROPOSAL O

The requirement for a company to maintain a register of all the charges it has created should be abolished.

PROPOSAL P

Only a company's creditors and members should have the right under the Companies Act to inspect instruments creating a company's charges.

¹⁰³ Sections 877 & 892, 2006 Act. The rules relating to access to these records are provided by the Companies (Company Records) Regulations 2008 (SI 2008/3006); the fees for inspection are set by the Companies (Fees for Inspection of Company Records) Regulations 2008 (SI 2008/3007).

¹⁰⁴ The CLR Report, paragraph 12.69; the Law Commission's Report, paragraph 3.300.

Wider application of requirements

If you would like to join in an internet discussion of the issues relating to the wider application of requirement to register charges, please go to <http://www.bis.gov.uk/companycharges/entities>. Comments are particularly invited on the requirements relating to charges created by overseas companies.

96. The provisions of Part 25 of the 2006 Act apply not only to the registration of charges created by UK companies incorporated under the 2006 Act or its predecessors, but also (in some cases with modifications) to:

- those UK companies incorporated by other means that have registered under the Companies Act or its predecessors¹⁰⁵ ;
- those overseas companies that have registered a UK establishment with Companies House¹⁰⁶;
- limited liability partnerships¹⁰⁷ ,
- European Economic Interest Groupings¹⁰⁸ .

Unregistered companies

97. At present, the requirement to register charges applies only to those UK companies that are registered with Companies House (ie those incorporated under the 2006 Act or its predecessors); the requirement does not apply to unregistered companies, such as those created by Royal Charter. The CLR recommended that the requirements should apply to unregistered companies. An instrument under section 1043 of the 2006 Act will be needed to implement this proposal.

PROPOSAL Q

The requirement to register charges should be the same for all UK companies, including unregistered companies.

Overseas companies

98. As already noted (see paragraph 4 above), the main purpose of the scheme for registration of charges is to make public if a company has used certain of its assets to secure borrowing. The requirement to register protects all creditors and potential creditors of the companies that are subject to it. Until 30 September 2009, it applied to all overseas companies with an established place of business in the UK that created charges over UK property. The requirement thus applied

¹⁰⁵ Section 1040, 2006 Act and the Companies (Companies Authorised to Register) Regulations 2009 (S.I. 2009/2437).

¹⁰⁶ The 2009 Regulations.

¹⁰⁷ The Limited Liability Partnerships (Application of the Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

¹⁰⁸ European Economic Interest Groupings Regulations 1989 (S.I. 1989/638).

whether or not the overseas company had registered its UK place of business, and thus whether or not there was a record of the company at Companies House. Charges created by overseas companies that were not registered at Companies House were recorded on a special register, known as the “Slavenburg Register”¹⁰⁹. Entry on the Slavenburg Register protected chargees from the charge being invalid. But, as the Register is not easily searchable, it does not meet the needs of third parties wishing to assess the creditworthiness of the company or checking whether a proposed security is already the subject of a charge: the requirement was thus ineffectual at protecting the creditors and potential creditors of those overseas companies that were not registered at Companies House. This problem was resolved by the 2009 Regulations which require registration of charges by *registered* overseas companies.

99. Under the 2009 Regulations, the scheme for overseas companies is essentially the same as the regime in Part 25 for UK companies except that:

- (a) there is a single UK-wide regime, regardless of where in the UK the overseas company has a registered establishment;
- (b) the requirement to register the charge only applies if the property subject to the charge is situated in the UK when the charge is created;
- (c) there is no requirement to register a charge on property acquired;
- (d) there is no criminal sanction for failure to register a charge;
- (e) the requirement on a company to keep a register applies only to registrable charges and to allow inspection of instruments applies only to registrable charges; and
- (f) the inspection regime is the same as for private companies under the Companies (Company Records) Regulations 2008¹¹⁰ (with the company being able to specify an inspection location that is instead of its principal office).

The intention is that the revised scheme for UK companies be applied to overseas companies with any necessary modifications. UK subsidiaries of overseas companies are subject to the provisions of Part 25 in the usual way as they are UK registered companies.

100. A complication relating to the registration of charges created by an overseas company is that the company may have registered in the UK under a name different to that under which it is incorporated – indeed this is required if the name under which it is incorporated includes characters from non-Roman alphabets or non-alphabetic languages. While the name on incorporation is required as part of the authentication of the registration of an overseas company, that name is not a “specified particular” for the purposes of the registration regime and therefore it is not subject to the requirement for any change to be notified. In any event, enforcement of such a requirement would not be practicable. Therefore any system for cross-references between names on incorporation and UK registered names of overseas companies could never be wholly reliable. However, if the UK

¹⁰⁹ *Slavenburg’s Bank NV v Intercontinental Natural Resources* [1980] 1 WLR 1076. In 2007/08, there were 33,216 new entries on the Slavenburg register; there were fewer than 10,000 registered overseas companies.

¹¹⁰ SI 2008/3006.

registration number is known, then the UK name can be easily discovered; the converse is also true. Companies House reject the registration of a charge if the name and number of the company creating the charge are not those under which it is registered there. A chargee must have either in order to register a charge and thus ensure that, for want of registration, the charge is not void under English law in the event of the company's insolvency.

QUESTION

4.A Do you agree that overseas companies that have registered a UK establishment should continue to be required to register at least some charges that they create?

101. Under the 2009 Regulations, as previously, the charge is registrable if it is over property in the United Kingdom. In some cases, it is not clear whether or not the property is in the UK, in particular when the charge is over either moveable or intangible property such as intellectual property or loans. The current statutory provisions offer no interpretation or guidance. In 2008, the Department sought views on draft Regulations which would have removed any uncertainty arising from the lack of definition of property situated in the UK. For property for which there is a register, the draft Regulations provided that it was to be regarded as situated in the UK if registered in a UK register; for other intangible property, the charge was to have been registrable if the property is subject to UK law. This was believed to be the current test used, although this had not been set out in any decided court case.

102. English law, due to its settled principles and certainty, governs international finance transactions all over the world. The 2009 draft Regulations would have applied the registration requirements to a large number of transactions by virtue of the company having a registered place of business in the UK even when its UK business was not relevant to the transaction in question. The definition of "situated in the UK" might have thrown doubt on the validity of existing unregistered charges. Furthermore this might have resulted in a move away from choosing English law to govern international syndicated credit agreements. Also, as the requirement to register no longer applies if the chargor does not have a registered UK establishment, it might have deterred overseas banks from establishing a branch in the UK.

103. Any addition to the property charged requires the creation of a new charge as does any change in the nature of the charge (such as replacing a fixed with a floating charge).

104. Following further consultation and discussions with representatives from the Financial Markets Law Committee, the British Bankers Association, Association of Foreign Banks, the Law Society, and the Finance Committee of the City of London Law Society, it was decided not to change the categories of registrable charges in advance of changes to the scheme as it applies to UK companies. It was agreed that the issue would be considered further together with consideration of proposals to amend the current scheme for UK companies.

105. Under Proposals A and B above, UK companies would be required to register all charges that they create except for Lloyd's trust deeds (other than a Lloyd's Deposit Trust Deed or a Lloyd's Security and Trust Deed). But, under other legislation, there is no requirement for any company to register a charge relating to a security financial collateral arrangement or where the chargee is the central bank of any country or the European Central Bank (see paragraph 12 above). This requirement for UK companies applies regardless of the location of the asset. For overseas companies, the alternatives include restricting the requirement to register to floating charges and either

- fixed charges over any asset where the chargor's title is registered in a UK specialist register; or
- fixed charges over land and tangible movable assets which are the subject of a UK specialist register.

QUESTION

4.B What charges created by overseas companies should be registrable at Companies House?

QUESTION

4.C Should the sanction of invalidity (see Proposal E) be modified in its application to charges created by overseas companies? If so, how?

QUESTION

4.D Should there be any other differences between the requirements for overseas companies and UK companies?

Limited liability partnerships

106. The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009¹¹¹ apply the current provisions relating to registration of charges to limited liability partnerships (LLPs).

PROPOSAL R

LLPs should continue to be subject to the same rules relating to registration of charges as apply to UK companies. Any amendments made as a result of this consultation should, therefore, be applied to LLPs.

¹¹¹ S.I. 2009/1804.

7. SPECIALIST REGISTERS

If you would like to join in an internet discussion of the issues relating to specialist registers, please go to <http://www.bis.gov.uk/companycharges/specialist>.

	paragraphs	questions
Background	107-114	5.A & B
Land in England and Wales	115-129	5.C& D
Land in Northern Ireland	130	
Land in Scotland	131-135	5.E
Scottish Register of Floating Charges	136-140	5.F & G

Background

107. Registration of charges at Companies House operates in parallel with requirements under other legislation for the registration of certain specific types of property with the relevant specialist registries. The CLR recommended the urgent pursuit with the relevant registrars of the possibility of establishing arrangements so that charges do not have to be registered at both Companies House and a specialist registry¹¹². The Law Commission, in their recommendations for notice-filing, recommended that fixed charges over registered land should not have to be registered with Companies House if registered or made the subject of a notice on the Land Register. They recommended that information about these charges should be made available from Companies House with other information about company charges. With regard to the other specialist registers for aircraft, ships and intellectual property, they considered that this would not be possible without a significant reduction in the information available to those dealing with companies; they recommended that charges over these assets should continue to be registrable at Companies House¹¹³. However in this document, in addition to the national specialist registries for land, we also consider the proposed Scottish Register of Floating Charges.

108. Sir Philip Hampton's 2005 review, 'Reducing Administrative Burdens: Effective Inspection and Enforcement' considered how to reduce unnecessary administration for businesses, without compromising the UK's excellent regulatory regime. His specific recommendations included substantially reducing the need for form-filling and other regulatory information requirements. He also set out some key principles that should be consistently applied throughout the regulatory system, including that businesses should not have to give the same piece of information twice.

¹¹² The CLR Report, paragraph 12.56.

¹¹³ The Law Commission's Report, paragraphs 3.38-3.41.

109. As previously noted (see paragraph 36 above), when the relevant provisions¹¹⁴ of the 2007 Act are brought into force, the establishment of a right under a floating charge under Scots law will take place on its registration in the Register of Floating Charges held by the Keeper of the Registers of Scotland (“the Keeper”). As a result, companies will have to register a floating charge created under Scots law under two separate pieces of legislation. The 2007 provisions apply to all companies, not just those incorporated in Scotland or elsewhere in the United Kingdom.

110. Against this background, the Companies Act 2006 provides power to make provision that a charge registered in a specialist register is to be treated as if it had been registered with Companies House. This power can only be exercised if the Secretary of State is satisfied that appropriate information-sharing arrangements have been made¹¹⁵.

111. There are several aspects to appropriate information-sharing arrangements. First, Companies House and the specialist registry must share information so that any filing that would have been rejected by Companies House (for example, because it does not include the correct name and number for the company creating the charge or any other required information is missing) is not treated as if registered at Companies House whether or not the specialist registry accepts the registration under its own procedures.

112. Second, anyone inspecting a particular company’s record at Companies House, would have to be able to see sufficient information for any charge that has been registered at the specialist register to ensure that third parties are not disadvantaged by the charge not having been registered at Companies House. This information must be available to all inspecting the company’s record, whether online, by bulk download, or by personal enquiry at a Companies House enquiry point; the online record would have to have a link to the relevant entry in the specialist register (see paragraphs 89-93).

113. Third, the specialist registry must also accept filing of a memorandum of satisfaction (in whole or in part) for any charge registered with it - and this information must be similarly shared with Companies House.

114. Fourth, these arrangements must not increase costs either for those who register charges or for those who use the information at Companies House to assess the financial status of companies. However the specialist registry’s prices would apply to any further inspection of a charge registered with it.

QUESTION

5.A How important do you consider it to be that those inspecting a company’s record at Companies House be able to discover whether it has granted any registrable charges?

¹¹⁴ Sections 38-41, 2007 Act. .

¹¹⁵ 2006 Act, section 893(3).

QUESTION

5.B What would be the consequences for you if the record at Companies House did not include charges over certain assets for which there is a specialist register?

Land in England and Wales

115. A fixed charge over land in England and Wales can be either a legal charge or an equitable charge. A fixed legal charge over land in England and Wales must also be registered with the Land Registry (except in the rare case of a second or subsequent charge of unregistered land¹¹⁶). Fixed equitable charges of registered land have to be protected by notice at the Land Registry, to preserve their priority, but are not substantively registered there.

116. The purpose and nature of registration at the Land Registry and Companies House are different. As explained previously (see paragraph 4 above), the purpose of the current scheme for registration of charges is to prevent the concealment of secured credit by companies; Companies House therefore records charges in relation to the company creating them. Registration does not affect the priority of the charge but failure to register timeously results in the charge being invalid against a liquidator, administrator or creditor. With the largest transactional database of its kind detailing over 22 million titles, Land Registry underpins the economy by safeguarding ownership of many billions of pounds worth of property. The purpose of registration at the Land Registry is to provide persons intending to acquire an interest in a particular freehold or leasehold estate in land with information about the subsisting interests affecting that estate. In the case of a legal charge, the Land Registry provides a guarantee of the chargee's power to sell the registered land in the event of default by the chargor. The Land Registry therefore records charges in relation to the estate in land charged by them. .

117. At present, in the case of a charge document involving a legal charge over land, the Land Registry's checks are similar to those done by Companies House. It is relatively uncommon for a charge instrument to contain only a legal charge of specified parcels of land; it is more usual for it also to contain fixed charges of other assets, for example plant and machinery or equipment and book debts, and perhaps a floating charge. When it receives such an instrument, the Land Registry only considers the provisions that charge the freehold or leasehold estates in respect of which the application is made. The Land Registry would not be in a position to take on the role of Companies House relating to the registration of the other aspects of these charges. This means that if there were provision so that charges registered at the Land Registry are treated as if registered at Companies House then any charge that covers other assets in addition to land would still have to be registered at Companies House.

¹¹⁶ A first legal charge of unregistered land triggers the requirement of first registration (Land Registration Act 2002, s.4(1)(g)). Legal charges of unregistered leasehold titles with seven years or less left to run are also exempt from registration at the Land Registry.

118. The Land Registry does not necessarily reject defective applications. It may, if the defect is not too serious, accept the application and require the applicant to correct it. The registration, when eventually completed, is backdated so that it takes priority from the time the application was received. There is no time limit for registration with the Land Registry, although priority is at risk if the charge is not registered within the priority period of an official search (6 weeks from the date of the search). Where unregistered land is subject to compulsory first registration (for instance on the grant of a first legal charge), there is a statutory time limit of two months, but there is provision for this to be extended indefinitely¹¹⁷. By contrast, under the Companies Act, if the requirements for registration are not fully satisfied within 21 days of the creation of the charge then the charge will not be registered except under a court order.

119. As noted in paragraph 114 above, the information-sharing arrangements must not increase costs for those who use the information at Companies House to assess the financial status of companies. The fee for inspecting or obtaining an official copy of a charge document held by the Land Registry is currently £6 if an electronic copy is held and the request is made online, and £12 in other cases. All new charges are now held as electronic copies. The fee for inspecting or obtaining an official copy of the register of an individual title is £4 if applied for online or £8 otherwise. The Land Registry also keeps an index of proprietor's names which can be used at a cost of £12 to establish what titles a company owns and a searchable record (the "day list") of searches and of applications for registration received but not yet completed.

120. An equitable fixed charge of registered land in England and Wales is not substantively registered in the same way as a legal charge. Instead, an application can be made to enter a "notice" of it in the register of the title(s) concerned¹¹⁸. The notice does not guarantee the validity of the charge in the way that substantive registration does, so it is not important for land registration to know whether or not it has been properly registered at Companies House, and the Land Registry does not check whether this has been done. We do not propose at this stage to include equitable charges in any information sharing arrangement with the Land Registry.

121. For legal charges over land in England and Wales, there are three options.

- A. registration at the Land Registry to be treated as meeting the requirements of the Companies Act;
- B. to be excluded from the list of registrable charges.
- C. to be required to be registered under Part 25 of the 2006 Act, ie as now.

We have discussed these options with the Land Registry.

Option A

122. Option A is registration at the Land Registry of a legal charge over land in England and Wales being treated as meeting the requirements of Part 25 of the

¹¹⁷ Section 6, Land Registration Act 2002.

¹¹⁸ Section 32, Land Registration Act 2002. The notice can either be an agreed notice or a unilateral notice.

2006 Act. Under this option, at the end of each working day, the Land Registry would automatically inform Companies House of the charge entry, the title number(s) and property descriptions against which it has been registered, and the name and company registration number of the chargor(s) (normally either the proprietor of those titles or a company to whom they are transferred). This information would then be entered on the public record at Companies House. This information is essentially the same as the information that would be on that record if charges over land were treated the same as other registrable charges. Under Proposal G above, the required particulars that are relevant to fixed charges over land are:

- (a) The registered name and registration number of the company that created the charge;
- (b) the date of the creation of the charge;
- (c) whether there is an instrument creating or evidencing the charge. ;
- (d) the name and address of the person entitled to the charge or his agent, with it being disclosed if:
 - (i) an agent for the chargee; or
 - (ii) a trustee for a group of lenders;
- (e) whether the class of property charged is land.

123. As previously noted, there is no time limit for registration with the Land Registry (see paragraph 118 above). Option A is therefore compatible with the option under which the 21-time limit for registration of a charge would be abolished (see paragraphs 33-34 above). If it were not, the Land Registry would not reject late registrations; nor would the Land Registry reject registrations that do not satisfy the Companies Act for any other reason. One possibility might be to exempt legal charges of registered land from separate registration at Companies House provided they were lodged for registration at the Land Registry with the priority period of an official search made before the creation of the charge (and provided they were then registered at the Land Registry). Otherwise there would need to be some procedure so that in the event of late registration:

- o the Land Registry does not transmit details of the charge to Companies House; and
- o it is clear to any person inspecting the Land Register that in the event of the insolvency of the chargor the charge would not be valid against a liquidator, administrator or execution creditor.

QUESTION

5.C Do you consider that the time limit for registration of a legal charge over land in England and Wales should be the priority period of an official search made before the creation of the charge?

124. Option A would remove the double registration requirement only for those charges that are only over land in England and Wales. This is a minority of charges over such land created by companies. Therefore we have not considered

Option A further. However, if charges over land in England and Wales continue to be registrable under the 2006 Act, then an arrangement along these lines will be necessary when electronic conveyancing is introduced for companies.

Option B

125. Under Option B, there would be no requirement for a charge over land to be registered at Companies House. This would mean that the requirements of the Land Registry would not be a constraint on the procedures for registration of charges. It would involve a significant reduction in the information available from Companies House. It would also mean that many fixed equitable charges would be invisible if, as is often the case, the chargee trusts the chargor not to make any second disposition.

126. Excluding charges over land in the United Kingdom from the list of registrable charges is unlikely to result in a significant reduction in filings at Companies House. Rather, it would result in a significant increase in the number of filings where the instrument includes both registrable and non-registrable charges.

127. We consider it unlikely that the advantages from this option would outweigh the disadvantages. We welcome comments on this option. In any event, we will reconsider it when electronic conveyancing is extended to companies.

Option C

128. Under this option, all charges over land would continue to be registered at Companies House.

Conclusion

129. Option A may be preferable in the longer term but, until the Land Registry introduces electronic conveyancing for companies, Option C is to be preferred.

QUESTION

5.D Do you agree that charges over land in England and Wales should continue to be registered at Companies House? If not, do you consider that:

- **registration at the Land Registry should be treated as meeting the requirements of the Companies Act; or**
- **that land should be excluded from the list of registrable charges?**

What do you consider would be the advantages and disadvantages of these alternatives?

Land in Northern Ireland

130. There is a similar requirement to register charges over land in Northern Ireland at the Land Registry of Northern Ireland as for charges over land in England and Wales. Electronic registration has not yet been introduced by the Land Registry of Northern Ireland. Therefore no change is envisaged to the requirements relating to charges over land in Northern Ireland.

Land in Scotland

131. The only consensual fixed security over land now recognised by Scots law is the standard security. Charges over land in Scotland are significantly different to those over land in England and Wales. In particular,

- (a) a charge over land in Scotland cannot also be over any other asset. By contrast, the majority of legal charges over land in England and Wales are also over other assets; and
- (b) the charge is created on its registration by the Keeper, ie at the Scottish land registry (see paragraph 132 below).

These differences mean that it may be easier to treat registration at the Scottish Land Registry as meeting the requirements of the 2006 Act.

132. The current procedure for registration of a charge over land or any interest in land situated in Scotland differs to that for all other charges. This is because the charge is created not on execution or delivery of the standard security but on its registration by the Keeper of the Registers of Scotland (the “Keeper”). This means that the date of creation is not apparent to Companies House from the face of the charge document. Once the Keeper is satisfied that registration has met her requirements, she issues a letter of confirmation of registration. The chargor or chargee then submits the particulars and a certified copy of the standard security to Companies House for registration for company law purposes. Companies House then issue the conclusive certificate, which the chargor or chargee subsequently sends to the Keeper so that he can complete his procedures for registration.

133. The Keeper has introduced electronic registration for security over land where the chargor is not a company. The 2006 Act requirement to register the charge with Companies House at present prevents her from extending electronic registration to companies. She would be able to extend electronic registration to companies if Companies House were to accept information provided by the Keeper as evidence of creation of the charge. She considers it would be possible to transmit the following information to Companies House:

- (a) The registered name and registration number of the company that created the charge;
- (b) the date of the creation of the charge (ie its date of registration by the Keeper;
- (c) that there was an instrument creating the charge;

- (d) the name and address of the person entitled to the charge; and
- (e) the class of property charged was land.

This differs from the required particulars for such a charge only as regards the chargee's particulars. Under Proposal G above, the required particulars would be:

the name and address of the person entitled to the charge or his agent with it being disclosed if:

- (i) an agent for the chargee; or
- (ii) a trustee for a group of lenders.

QUESTION

5.E What do you consider would be the advantages and disadvantages of treating a standard security over land in Scotland created by companies as if they were registered at Companies House if the Keeper were to provide particulars to Companies House?

134. There are still some legal and technical questions to be addressed but it seems likely that the Keeper would be able to transmit this information to Companies House in a form that would enable Companies House to make the information available on the same basis as information for charges registered with it directly. If these problems are solved, it would be possible to treat any charge over land in Scotland that had been registered at Registers of Scotland under its automated registration of title of land as if it had been registered at Companies House. It may also be possible to extend this to paper applications for registration.

135. At present, those creating charges over land in Scotland have to pay registration/filing fees to both Registers of Scotland and Companies House. Substituting electronic transmission to Companies House of particulars by the Keeper for the issue of a letter of confirmation is expected to reduce the total costs for those registering the security.

Scottish Register of Floating Charges

136. When the 2007 provisions come into force, a floating charge will need to have been created under Scots law by being registered in the new Register of Floating Charges ("a Scottish floating charge") in order to avoid any uncertainty as to whether it will be effective in relation to Scottish assets.

137. It is commonplace for floating charges granted by Scottish or English companies (or indeed other entities) to charge all assets wherever situated or governed by whichever laws. Some consider that lenders' response to the introduction of the 2007 Act's provisions will be to change their standard practices in particular with regard to the traditional "fixed and floater" under English law. Possibilities include:

- routinely creating a Scottish floating charge over both Scottish and non-Scottish assets whether or not there are any Scottish assets to be charged at the time of the creation of the charge; and
- taking separate floating charges for a chargor's Scottish and non-Scottish assets – this is likely to be the more attractive option for those lenders wishing to include an automatic crystallisation clause as such provision is not possible under Scots law.

In any event, those interested in the financial standing of any company that has significant assets in Scotland - or might do so at some future date - will need to check whether it has created a Scottish floating charge.

138. In May 2007, the Department of Trade and Industry published a consultation document "Registration of Scottish Floating Charges"¹¹⁹. The responses to the questions are at Annex C. Analysis of these is difficult as many comments were related primarily to the 2007 provisions. There was strong support for avoiding any requirement for dual registration provided that this would not increase costs for either those registering Scottish floating charges or those checking on companies. The majority of respondents were concerned that the information available from Companies House about any floating charge created by a company under Scots law be on the same basis as that about other registrable charges, ie no less information, available in the same way, and at no extra cost. Others considered it would be sufficient to know that the company had created a Scottish floating charge.

139. The intention remains that there be provision so that Scottish floating charges are treated as if also registered at Companies House only if this does not affect the public availability of its essential particulars (see paragraphs 89-93) nor increase the total cost of registration. There have been preliminary discussions between Companies House and Registers of Scotland over the technical and legal issues that will need to be resolved.

QUESTION

5.F Would it be sufficient if the information on the company's record at Companies House for a floating charge created under Scots law were:

- (a) The name and registration number of the company that created the charge;**
- (b) the date of the creation of the charge and, in the case of a Scottish Floating Charge, the date of registration of any advance notice; and**
- (c) an indication that the charge was created by registration at the Scottish Register of Floating Charges;**

or is it essential that the Companies House record show all the information proposed for charges registered at Companies House?

(Under Proposal G above, the missing information would be:

¹¹⁹ URN 07/1033.

- (d) the name and address of the person entitled to the charge or his agent with it being disclosed if:
 - (i) an agent for the chargee; or
 - (ii) a trustee for a group of lenders;
- (e) the classes of property charged, say land; ships or aircrafts; other corporeal property; book debts; goodwill or any intellectual property;
- (f) whether the property charged includes after-acquired property and, if so whether it is over all present and after-acquired property.
- (g) in the case of a floating charge, whether there is:
 - (i) an automatic crystallisation clause;
 - (ii) a negative pledge.

140. In December 2009, the Scottish Government invited Registers of Scotland to set up a Technical Working Group whose remit includes considering what legal and administrative changes are required to enable stakeholder acceptance of the Scottish Register of Floating Charges. One option being considered by this working group is for it to be possible for Scots law to recognise a floating charge if its registered particulars at Companies House were to include that it is effective under Scots law (see Proposal G).

QUESTION

5.G Who would be most affected by arrangements so that Scottish floating charges do not have to be registered separately at both Registers of Scotland and Companies House, and how?

8. Impact Assessment of Proposals

If you would like to join in an internet discussion of the issues relating to the impact of the proposals, please go to <http://www.bis.gov.uk/companycharges/impact>. Comments are particularly invited on the requirements relating to charges created by overseas companies. Comments are particularly invited on the cost and other considerations that should affect the decisions as to what changes should be made to the scheme for registration of charges.

141. An Impact Assessment must be produced for any legislative proposal with a significant impact on business. This sets out the risk or problem to be addressed and assesses the options available against a 'do nothing' option and any non-legislative or non-regulatory options. Its aim is to answer the question 'Is this the best way of achieving the objective?' There is not a draft with this consultation document. All the responses to this consultation will contribute to the Impact Assessment. Answers to the following questions will be particularly helpful to our assessment of the costs and benefits of each option.

QUESTION

- 6.A What is the total cost of registering a charge under the current regime? Which of the proposals would increase this cost and which would decrease it – and by how much?**

QUESTION

- 6.B How would the proposals affect the cost of checking the financial standing of companies?**

QUESTION

- 6.C Would the proposals bring any other benefits?**

QUESTION

- 6.D Would any of the proposals create one-off transitional costs?**

QUESTION

- 6.E Are there any other cost considerations that should affect the decision whether to implement these proposals?**

9. CONSULTATION QUESTIONS

142. We would be grateful for your answers to the questions in this consultation document and your comments on the proposals. Both the questions and proposals are listed at Annex B. You may answer in any way you find convenient (see p.4), including online at <http://www.bis.gov.uk/companycharges/responseform>.

143. However you reply, please could you make clear if, in some way, you consider that your response is from the viewpoint of chargors and/or chargees and/or potential creditors and/or legal advisers to chargors or chargees or some other group. Also please can you make clear whether you are responding on behalf of some entity or are responding in a personal capacity.

10. WHAT HAPPENS NEXT

144. A summary of the comments received in response to this consultation and the Government's response will be published before end-September 2009. A draft Impact Assessment will be published at the same time, based on the answers to the questions in this consultation document.

145. We expect that there will need to be further discussions with stakeholders before any regulations are drafted. In any event, comments will be sought on draft Regulations before they are considered by Parliament.

ANNEXES

Annex A Proposals and questions

Annex B Examples of information available from Companies House

Annex C Summary of responses to 2007 consultation relating to registration of Scottish floating charges

Annex D: The consultation code of practice criteria: comments or complaints

Annex E List of those consulted

ANNEX A PROPOSALS AND QUESTIONS

Proposals

proposal & page numbers	PROPOSAL	numbers of relevant paragraphs
The Requirement to Register Certain Charges		
A 14	Any charge created by a UK company should be registrable unless specifically exempted.	16-18
B 15	The only exclusion from the requirement to register charges created by a UK company should be Lloyd's trust deeds other than a Lloyd's deposit trust deed or a Lloyd's security and trust deed.	20
C 17	The requirement to register charges existing on property acquired should be abolished.	28-29
D 20	<p>There should be a definition of date of creation for the purposes of the timelimit for registration of a charge.</p> <ul style="list-style-type: none"> • For a charge created under the law of England, it should be: <ul style="list-style-type: none"> ○ the date of the chargor's signature in the case of a charge created by an instrument in writing; and ○ the date when the chargor entered into an enforceable agreement in any other case. • For a charge created under the law of Scotland, it should be: <ul style="list-style-type: none"> ○ the date of registration in the Scottish Register of Floating Charges in the case of a floating charge (or, if these provisions are not in force, the date the instrument is executed by the chargor); and ○ in any other case, when the chargee acquires a real right. 	35-36
E 21	The sanction of invalidity should be modified so that an unregistered charge is ineffective against a liquidator or administrator on insolvency and against execution creditors (under Scots law, creditors who have executed diligence)	37-38
F 24	<p>(i) A person taking a charge over a company's property should be taken to have notice of any previous charge registered at the time the charge is created.</p> <p>(ii) No other person should be taken to have notice of a registered charge</p>	47-50

Procedures for Registering Charges		
G 29	<p>The required particulars should be:</p> <ul style="list-style-type: none"> (a) The registered name and registration number of the company that created the charge; (b) the date of the creation of the charge and, in the case of a Scottish floating charge, the date of registration of any advance notice; (c) Whether there is an instrument creating or evidencing the charge. If not, how the charge was created (eg by registration in the Scottish Register of Floating Charges); (d) The name and address of the person entitled to the charge or his agent, with it being disclosed if: <ul style="list-style-type: none"> (i) an agent for the chargee; or (ii) a trustee for a group of lenders; (e) the classes of property charged, say land; ships or aircrafts; other corporeal property; book debts; goodwill or any intellectual property; (f) whether the property charged includes after-acquired property and, if so whether it is over all present and after-acquired property; (g) in the case of a floating charge, whether there is: <ul style="list-style-type: none"> (i) an automatic crystallisation clause; (ii) a negative pledge. 	58-64
H 31	Registration of a charge should only prevent its invalidity for the classes of property included in both the brief particulars and the instrument creating the charge (if any).	64 & 70
I 31	<p>Companies House should issue a certificate that is conclusive evidence of</p> <ul style="list-style-type: none"> • the identity of the chargor; • the date of registration of the charge whose brief particulars are on the register; • that the charge was registered within 21 days of its date of creation; • the class(es) of charged property. 	66-70
J 34	<ul style="list-style-type: none"> (a) Abolition of the requirement for the instrument (or a certified copy) to be delivered to the Registrar. (b) Introduction of a requirement that only the company that created a charge may register it. (c) If the charge is not registered within 21 days of its creation, it should be repayable on demand. (d) The civil liability for the accuracy of the particulars should lie with the chargor. 	73-78

alter- native to J 34	<p>(a) Either the instrument creating the charge or a certified copy should be required to be delivered to Companies House for registration of the charge - which is filed being the decision of the person filing;</p> <p>(b) Companies House should check the instrument (or certified copy) to ensure that the name of the chargor is the same as that in the particulars filed. The instrument should then be returned to the person who filed the particulars; and</p> <p>(c) The civil liability for the accuracy of the filed particulars, including the date of creation and the class(es) of property charge, should lie with the chargee at the time of the creation of the charge.</p> <p>(d) The criminal sanction for failure to register a charge should be repealed.</p>	73-78
K 35	There should be provision so that in the event of a late registration as directed by a court, the conclusive certificate is not issued until satisfaction of any timing condition provided by the court.	78-79
L 36	There should be provision for: <ul style="list-style-type: none"> (i) the chargee voluntarily to file changes relating to the person entitled to the charge; (ii) the chargor to be required to file the addition of a negative pledge. 	84-85
M 37	There should be provision for a memorandum of satisfaction in whole or in part to be filed by the chargee. On satisfaction of the terms of the charge, the chargor should have the right to demand that the chargee files a memorandum of satisfaction. The chargee would be required either to make the appropriate filing within 15 days of the chargor's demand or to commence court proceedings. In the event that neither the chargee has neither made the filing nor obtained a court order has been obtained by the end of 90 days (or such longer period as the court may direct), then the chargor can make the filing.	86-88
Public access to information about companies' charges		
N 39	The requirement for Companies House to maintain a "Register of Charges" for each company should be revised so that the particulars entered are the filed particulars of each charge.	89-93
O 40	The requirement for a company to maintain a register of all the charges it has created should be abolished.	94-95
P 40	Only a company's creditors and members should have the right to inspect instruments creating a company's charges.	94-95

Application to entities other than companies formed and registered under the Companies Act 2006		
Q 41	The requirement to register charges should be the same for all UK companies, including unregistered companies.	96-97
R 44	LLPs should continue to be subject to the same rules relating to registration of charges as apply to UK companies. Any amendments made as a result of this consultation should, therefore, be applied to LLPs.	106

Questions

question & page numbers	QUESTION	relevant paragraphs
The Requirement to Register Certain Charges		
1.A 13	Do you consider that the same rules should apply to all UK companies?	12 &15
1.B 15	Under the proposal only to exclude charges over Lloyd's trust deeds (Proposal B), what charges that are not currently registrable would be made registrable?	20
1.C 15	Do you consider that the requirement to register at Companies House should not apply to floating charges over financial collateral?	23
1.D 16	Do you consider that there should be a requirement that the crystallisation of a floating charge be registered within 21 days of that event? If so, on whom should the requirement fall and what should be the sanction?	25-27
1.E 19	Do you consider that the 21-day time limit for registration should be abolished? Why?	30-34
1.F 19	If the 21-day time limit for registration were abolished, do you consider there would need to be any safeguards?	34
1.G 19	In practice, do third parties suffer from charges being valid because a conclusive certificate has been issued in circumstances when in fact the requirements for registration were not met within 21 days of the creation of the charge?	35
1.H 21	Is it necessary for the Act to provide for the situation where insolvency proceedings are begun 21 days or less after the creation of a charge?	39-40
1.I 23	Should the buyer of property subject to an unregistered charge take free of the charge unless they know of it?	46

Procedures for registering a charge		
2.A 29	Do you consider that all the proposed particulars (ie Proposal G (a)-(g)) are essential information about a company that should be available from Companies House? Is there any other information you consider should be required?	58-64
2.B 31	Would the conclusive certificate still be deemed for any purpose other than registration of land if the information on the public record were sufficient evidence for the courts of the facts in the conclusive certificate?	66-71
2.C 31	What would be the impact on chargees of land and those dealing with them if registration of a legal charge at the Land Registry often incorporated a note that the charge may not have been properly registered under the Companies Act?	72
2.D 31	Apart from the consequences for the Land Register, what would be the effects of the proposed changes relating to conclusive evidence?	66-71
2.E 32	Do you consider there is a better way of preventing malicious registration than requiring the charge to be registered by the chargor?	75-76
2.F 32	Does the requirement to deliver the charge document reduce the risk of malicious registration of a non-existent charge?	73-76
2.G 32	What would be the advantages of electronic registration of charges? In particular, how would the cost of registration be affected?	77
2.H 33	If electronic registration of charges were possible, should the time limit for registration be reduced to 14 days?	30-32 & 77
2.I 33	Under the alternative to Proposal J, should it be possible to deliver an electronic pdf copy of the charging document instead of the original or a certified copy? Or would this bring a significant risk of fraud.	72 & 77

Public access to information about companies' charges		
3.A 38	What use do you make of information about company charges held at Companies House?	89-93
3.B 38	How often do you access information about company charges: <ul style="list-style-type: none"> • through Companies House Information Centres? • through copies ordered from Companies House Contact Centre; • online through WebCheck, • online through the subscription service, CompaniesHouseDirect • using the Companies House DVD ROM Directory; • through a bulk contract • in the statutory "Register of Charges" 	86-93
3.C 39	(i) How often do you inspect a company's own register of its charges? (ii) If you represent a company, how often has someone sought to inspect your register of charges? (iii) How would you be affected by abolition of the requirement for a company to keep a register of its charges?	94-95
3.D 39	(i) How often do you inspect the instruments creating charges of a company of which you are not a member or creditor? (ii) If you represent a company, how often has someone who is not a member or creditor of the company sought to inspect an instrument creating a charge? (iii) How would you be affected by abolition of the right for anyone other a member or creditor to inspect a company's instruments creating charges	94-95
Application to entities other than companies formed and registered under the Companies Act 2006		
4.A 42	Do you agree that overseas companies that have registered a UK establishment should continue to be required to register at least some charges that they create?	98-100
4.B 43	What charges created by overseas companies should be registrable at Companies House?	16-21 & 101-105
4.C 43	Should the sanction of invalidity (see Proposal E) be modified in its application to charges created by overseas companies? If so, how?	30-38 & 105
4.D 43	Should there be any other differences between the requirements for overseas companies and UK companies?	12-50 & 105

Specialist registers		
5.A 45	How important do you consider it to be that those inspecting a company's record at Companies House be able to discover whether it has granted any registrable charges?	89-93 & 110-114
5.B 45	What would be the consequences for you if the record at Companies House did not include charges over certain assets for which there is a specialist register.	89-93 & 110-114
5.C 48	Do you consider that the time limit for registration of a legal charge over land in England and Wales should be the priority period of an official search made before the creation of the charge?	115-129
5.D 49	Do you agree that charges over land in England and Wales should continue to be registered at Companies House? If not, do you consider that: <ul style="list-style-type: none"> • registration at the Land Registry should be treated as meeting the requirements of the Companies Act; or • that land should be excluded from the list of registrable charges? • What do you consider would be the advantages and disadvantages of these alternatives? 	115-129
5.E 50	What do you consider would be the advantages and disadvantages of treating a standard security over land in Scotland created by companies as if they were registered at Companies House if the Keeper were to provide particulars to Companies House?	131-133
5.F 52	Would it be sufficient if the information on the company's record at Companies House for a floating charge created under Scots law were <p>(a) The name and registration number of the company that created the charge;</p> <p>(b) the date of the creation of the charge; and</p> <p>(c) an indication that the charge was created by registration at the Scottish Register of Floating Charges;</p> or is it essential that the Companies House record show all the information proposed for charges registered at Companies House?	65 & 136-139

Impact Assessment of Proposals		
6.A 53	What is the total cost of registering a charge under the current regime? Which of the proposals would increase this cost and which would decrease it – and by how much?	51-88 & 140
6.B 53	How would the proposals affect the cost of checking the financial standing of companies?	88-94 & 140
6.C 53	Would the proposals bring any other benefits?	51-94 & 140
6.D 53	Would any of the proposals create one-off transitional costs?	51-94 & 140
6.E 53	Are there any other cost considerations that should affect the decision whether to implement these proposals?	51-94 & 140

ANNEX B EXAMPLES OF INFORMATION AVAILABLE FROM COMPANIES HOUSE

Companies House Direct

Page 1 of 1



COMPANY DETAILS



Name & Registered Office:

Company No.:

Date of Incorporation: 30/04/1962

Country of Origin: United Kingdom

Status: Active

Company Type: Private Limited Company

Nature Of Business (SIC(03)):

3650 - Manufacture of games and toys

3663 - Other manufacturing

Accounting Reference Date: 30/11

Last Accounts Made Up To: 30/11/2008 (TOTAL EXEMPTION SMALL)

Next Accounts Due: 31/08/2010

Last Return Made Up To: 13/09/2009

Next Return Due: 11/10/2010

Mortgage: Number of Charges: 3 (2 outstanding / 1 satisfied / 0 part satisfied)

Last members list: 13/09/2009

Previous Names

No previous name information has been recorded over the last 20 years.

<http://chd3.companieshouse.gov.uk/31e8beb3d1f0bc80bcf0b9fd48a4f6fde/compdetails> 10/02/2010



COMPANY DETAILS



Name & Registered Office:

Company No.:

Date of Incorporation: 30/04/1982

Country of Origin: United Kingdom

Status: Active

Company Type: Private Limited Company

Nature Of Business (SIC(03)):

3650 - Manufacture of games and toys

3663 - Other manufacturing

Accounting Reference Date: 30/11

Last Accounts Made Up To: 30/11/2008 (TOTAL EXEMPTION SMALL)

Next Accounts Due: 31/08/2010

Last Return Made Up To: 13/09/2009

Next Return Due: 11/10/2010

Mortgage: Number of Charges: 3 (2 outstanding / 1 satisfied / 0 part satisfied)

Last members list: 13/09/2009

Previous Names

No previous name information has been recorded over the last 20 years.



COMPANY DETAILS



Name & Registered Office:**Company No.:****Date of Incorporation:** 30/04/1982**Country of Origin:** United Kingdom**Status:** Active

Company Type: Private Limited Company**Nature Of Business (SIC(03)):**

3650 - Manufacture of games and toys

3663 - Other manufacturing

Accounting Reference Date: 30/11**Last Accounts Made Up To:** 30/11/2008 (TOTAL EXEMPTION SMALL)**Next Accounts Due:** 31/08/2010**Last Return Made Up To:** 13/09/2009**Next Return Due:** 11/10/2010

Mortgage: Number of Charges: 3 (2 outstanding / 1 satisfied / 0 part satisfied)**Last members list:** 13/09/2009

Previous Names

No previous name information has been recorded over the last 20 years.



COMPANY MORTGAGE INDEX



Company Number:
Company Name:

Number of Charges: 3 (2 outstanding / 0 part satisfied / 1 satisfied)

The following details relate to all outstanding and part-satisfied charges for the company together with charges satisfied since 01/01/1987. Charges are displayed with the oldest first.

View charges from: to:

Satisfied

To obtain further details please click on the appropriate charge description
(£1.00 for all charges).

Description: DEBENTURE

Person(s) Entitled: BARCLAYS BANK LIMITED

Status: Outstanding

Created 05/12/1974

Registered 19/12/1974

Description: MORTGAGE

Person(s) Entitled: COUNCIL FOR SMALL INDUSTRIES IN RURAL AREAS

Status: Satisfied

Created 30/07/1980

Registered 05/08/1980

Description: LEGAL CHARGE

Person(s) Entitled: BARCLAYS BANK PLC

Status: Outstanding

Created 15/11/1988

Registered 02/12/1988

MORTGAGE DETAILS

Company Number:
Company Name:

Number of Charges: 3 (2 outstanding / 0 part satisfied / 1 satisfied)

The following details relate to all outstanding and part-satisfied charges for the company together with charges satisfied since 01/01/1987. Charges are displayed with the oldest first.

View charges from: to:

Satisfied

Description: DEBENTURE

Charge is Outstanding

Person(s) Entitled: BARCLAYS BANK LIMITED

Acquisition Date:

Created: 06/12/1974

Registered: 19/12/1974

Form Type: Not Known

Amount Secured: ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO THE CHARGEE ON ANY ACCOUNT WHATSOEVER

Short Particulars:

FIXED AND FLOATING CHARGE ON THE GOODWILL UNDERTAKING AND ALL PROPERTY AND ASSETS PRESENT AND FUTURE INCLUDING UNCALLED CAPITAL SEE THE MORTGAGE CHARGE DOCUMENT FOR FULL DETAILS

Description: MORTGAGE

Charge is Satisfied

Satisfied date: 18/01/2001

Person(s) Entitled: COUNCIL FOR SMALL INDUSTRIES IN RURAL AREAS

Acquisition Date:

Created: 30/07/1980

Registered: 05/08/1980

Form Type: Not Known

Amount Secured: £3,954 AND FURTHER ADVANCES NOT EXCEEDING £18,406

Short Particulars:

Forms registered against this charge:

TYPE	DATE
403a	18/01/2001

Description: LEGAL CHARGE

Charge is Outstanding

Person(s) Entitled: BARCLAYS BANK PLC

Acquisition Date:

Created: 15/11/1988

Registered: 02/12/1988

Form Type: Not Known

Amount Secured: ALL MONIES DUE OR TO BECOME DUE FROM THE COMPANY TO THE CHARGEE ON ANY ACCOUNT WHATSOEVER

Short Particulars:

.....

ANNEX C SUMMARY OF RESPONSES TO 2007 CONSULTATION RELATING TO REGISTRATION OF SCOTTISH FLOATING CHARGES

Overview of the proposal under consultation

Floating charges registered in the Scottish register of floating charges will be treated as if they have also been registered with the Registrar of Companies (“Registrar”) at Companies House (i.e. physical registration with the Registrar will not be required). This is subject to appropriate systems being in place for sharing information between the Keeper of Registers of Scotland (“the Keeper”) and the Registrar.

The proposal flows from the Bankruptcy and Diligence etc (Scotland) Act 2007 which provides that, under Scots law, a floating charge is created on its registration in a register of floating charges established by that Act. Currently Scottish floating charges must be registered with the Registrar in order to be valid against a liquidator or administrator in the event of a company’s insolvency. The proposal will, therefore, avoid the necessity for Scottish floating charges to be registered twice, whilst ensuring that information pertaining to such charges can be obtained from the Registrar and that they are valid against a company’s liquidator or administrator.

The Companies Act 2006 (“2006 Act”) contains a power which enable the Secretary of State to make provision, in regulations made under that Act, for a charge registered in a special register is to be treated as if it had been registered with the Registrar and a general power which enables the Secretary of State to amend various provisions in Part 25 of that Act.

Respondents:

Responses to the consultation were received from:

- a. the Committee of Scottish Clearing Bankers
- b. the British Bankers Association
- c. the APACS
- d. the Institute of Chartered Accountants of Scotland
- e. the Institute of Credit Management
- f. HM Land Registry
- g. Tods Murray LLP
- h. Scott Wortley
- i. David Cabrelli
- j. Roger Hawkins
- k. Nicholas Grier

Respondents a) to g) are organisations representing the views of their members or employees. Respondents h) to k) are individuals (academics and lawyers) who have responded in a personal capacity. Further information about the respondents is given at the end of this document.

Analysis of responses:

Headline:

There is strong support for avoiding any requirement for dual registration providing that this does not increase the costs of registration. Timely and accurate systems for sharing information between the Registrar and Keeper are considered to be crucial. Respondents would prefer more information to be available from the Registrar (in particular from the Charge Index kept at Companies House) than is currently proposed.

Responses to specific questions asked of consultees.

Question 1: What do you consider would be the advantages of the proposal?

- a) That floating charges registered in the Scottish register of floating charges be treated as if they had been registered with the Registrar; and
- b) For arrangements for information to be shared by the Keeper and the Registrar?

Responses:

A requirement for dual registration is seen as a retrograde step and the vast majority of respondents want to avoid this (subject to cost). Key benefits described include: avoiding an unnecessary administrative burden for companies, banks and solicitors; avoiding unnecessary costs; removes the potential for error and the risk of failure to attend to the second registration; creates a much simpler and more straightforward system.

Question 2: Do you agree that the company's Charge Index at Companies House should show only that the company has granted a Scottish floating charge and the status of the charge?

If not, what other information do you consider should be included and, noting that the fee will be calculated on a cost-recovery basis, what fee do you consider searchers would be prepared to pay for being able to get this extra information from Companies House?

Responses:

The majority of respondents do not agree with the proposal and consider that the Charge Index at Companies House should include the same information for Scottish charges as it does for other charges registered at Companies House. There were mixed views about what information needed to be in the Charge Index itself and what could be obtained from a link to the Keeper's site but the CSCB in particular commented that it was not helpful to require banks to perform two searches or to follow an electronic link (thereby incurring further costs) simply to obtain basic information. For details of the information which is considered desirable see response to question 7.

Only the CSCB, BBA, APACS and ICAS commented on the fee. All are of the view that as there is no benefit to banks from the change to the registers the fee for searching should be no more expensive than it is at present, i.e. £1.

Question 3: What do you consider would be the benefit of the expected reduction to 1 day, from an average of 16 days, in the invisibility period as regards the company's record at Companies House for those Scottish floating charges for which there is no advance notice?

Responses:

Whilst some respondents thought that the invisibility period almost never caused a problem in practice, respondents considered that the benefits were as follows: increased certainty for lenders; will minimise the risk of fraud; will remove the need to search register twice (to ensure no prior charge and immediately before registering own charge); will remove the necessity for personal warranties; will reduce uncertainty and risk for purchasers and their solicitors.

Question 4: Do you consider the proposal would reduce any costs for any companies? If so what?

Responses:

Whilst some considered that the proposal would save on the cost of dual registration, the CSCB in particular commented that their support for the proposal to avoid double registration would change if the cost of sharing information meant that double registration would be a cheaper option. Several respondents commented that the introduction of a new Scottish register appeared to increase costs for companies and said that it was difficult to justify why lending for Scottish customers would be higher than that for their counterparts over the border.

Question 5: What do you consider would be the disadvantages of the proposal?

Responses:

Whilst some respondents thought there were no disadvantages (particularly if the IT/information sharing systems are set up correctly), the CSCB, BBA and APACS commented that it would be inconvenient to search in two places. They consider that there may be increased costs (particularly for Scottish companies) and think there is scope for confusion in the transitional period. The BBA/APACS thought it would be disadvantageous if registration does not result in conclusive evidence that the requirements of registration have been complied with and no challenge by a liquidator or creditor will be sustainable.

Question 6: Do you consider the proposal would increase any costs for any companies? If so, what?

Responses:

Whilst some respondents thought it would reduce costs/not result in any other costs for companies, the CSCB, BBA and APACS commented that increased searching and registration costs will be passed on to corporate borrowers by the banks.

Question 7: What do you consider would be the effect of the proposed information sharing arrangements on those who currently use the public record at Companies House?

Responses:

The majority of respondents thought that the proposed information sharing arrangements would be beneficial providing that the Charge Index contained sufficient information for general purposes such as drawing up a Ranking Agreement. If the Charge Index did not contain this information a link to the Scottish Register would be needed and some respondents thought this may lead to increased costs.

Information which is considered desirable (in terms of what is shown in the Charge Index) includes: the company name and number; a description of the security; the date of creation of the charge; the date of registration of the charge or advance notice (if applicable); the amount secured by the charge and the person entitled to it; and short particulars of the property charged.

Question 8: Do you consider the companies' Charge Indexes and Charge Details to be sufficient means of obtaining the information held by the Registrar?

Responses:

The majority of respondents thought the Charge Indexes and Charge Details do/should (see answer to previous question) provide sufficient information, although some commented that searchers could not rely on this for legal purposes and others thought it would be helpful to see/have a link to the full charge document.

Question 9: What is your view of the alternatives either simply to remove the double registration requirement or to do nothing (i.e. require double registration)?

Responses:

General consensus that requiring double registration would be a retrograde step that imposes unnecessary burdens on banks, solicitors and companies. There appears to be some confusion about what was meant by "double registration" with at least one respondent assuming that this referred to a requirement to register a UK charge in the Scottish register to "be on the safe side".

The CSCB are strongly against exempting Scottish companies/Scottish floating charges from the requirement to register and consider that it would be unacceptable if it was not possible to discover from a company's Charge Index whether or not it had granted a Scottish floating charge.

Question 10: Do you agree that, in addition to the registration fee, the legal and administrative cost of registering a Scottish Floating Charge with the Registrar as well as the Keeper would be in the range £50-£200?

Responses:

General consensus that the additional cost would be in the region of £50-£200, subject to who completed the work (the BBA/APACS thought the additional cost was unlikely to be as high as £50 unless registration was outsourced to a solicitor – in which case they thought the cost could be as high as £200).

Question 11: Do you consider that the proposal or any of the other options:

- would distort competition in any way?
- would have an impact on small firms?
- would have any implication for legal aid, health, human rights or rural communities?
- would have any implication for race or disability or gender equality?
- would have any implication for sustainable development, carbon assessment, or any other environmental issues?

Responses:

General consensus that the proposal would not have a material impact on competition, small firms etc but some respondents thought that environmental benefits may flow from greater use of IT/less paper work in certain circumstances.

The CSCB thought that there may be legal challenges as Scottish companies will have an administrative burden and expense that their English counterparts will not.

Respondents to May 2007 consultation on the registration of Scottish floating charges:

CSCB	The Committee of Scottish Clearing Bankers is the representative body of four Scottish clearing banks (Bank of Scotland, Clydesdale Bank PLC, Lloyds TSB Scotland plc and The Royal Bank of Scotland plc).
BBA	The British Bankers Association is the leading UK banking and financial services trade association with 225 banking members from 60 different countries.
APACS	The APACS is the UK trade association for payments and for those institutions that deliver payment services to customers. Its members' payment traffic volumes account for approximately 97% of the total UK payments market. (Note whilst the APACS asked for their response to be counted separately, the members of the APACS who are most affected by the proposal are also members of the BBA and responded through the BBA).
ICAS	The Institute of Chartered Accountants of Scotland is the professional body for chartered accountants in Scotland. (Note the response was from the Institutes' Director of Insolvency).
ICM	The Institute of Credit Management is the largest professional credit management organisation in Europe. Its 8,500 members hold important, credit related appointments throughout industry and commerce. Trim ref:
Land Registry	The Land Registry registers title to land in England and Wales and records dealings (for example, sales and mortgages) with registered land. Trim ref:
Tods Murray	Tods Murray is a large Scottish law firm extensively involved in negotiating and registering floating charges of various types. They worked with the Scottish Executive in the development of aspects of the new Scottish floating charges regime. The response came from Tods Murray's Banking Department.:
Scott Wortley	A Scottish qualified non-practising solicitor and lecturer at the University of Edinburgh. Scott Wortley is a member of the Law Society of Scotland Conveyancing Committee and the Joint Consultative Committee between the Registers of Scotland and the Law Society of Scotland. (Note comments made in a personal capacity).
David Cabrelli	David Cabrelli is a lecturer in Commercial law and Solicitor (non-practising), University of Edinburgh. (Note comments made in a personal capacity).
Roger Hawkins	Roger Hawkins works for Berwin Leighton Paisner LLP. (Note comments made in a personal capacity).
Nicholas Grier	Nicholas Grier is a senior lecturer, Centre for Law, Napier University. (Note comments made in a personal capacity).

ANNEX D: THE CONSULTATION CODE OF PRACTICE CRITERIA

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

COMMENTS OR COMPLAINTS

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Tunde Idowu,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Tunde on 020 7215 0412
or e-mail to: Babatunde.Idowu@bis.gsi.gov.uk

ANNEX E: LIST OF THOSE CONSULTED

This consultation document will be sent to those on the following list. In addition, we will draw it the attention of the approximately 800 interested parties who have asked to be on the circulation list of the Corporate Law and Governance Directorate of the Department for Business, Innovation and Skills.

We welcome suggestions of others who may wish to be involved in this consultation process.

Accountant in Bankruptcy, The	Committee of Scottish Clearing
A M Simpson & Son	Bankers
Aldridge, Trevor QC	Companies House, Belfast
Allen & Overy LLP	Companies House, Cardiff
Ashurst LLP	Companies House, Edinburgh
Asset Based Finance Association, The	Confederation of British Industry
Association of Business Recovery	Consumer Credit Trade Association
Professionals	Crown Estate, The
Association of Chartered Certified	Currie, Simon
Accountants, The	Davies, Professor Iwan
Association of Foreign Banks. The	de Koven, Ronald
Bank of England	Dickinson, Andrew
Barclays Bank PLC	Dun & Bradstreet
Barns-Graham, Victoria	Dundas & Wilson LLP
Beale, Professor Hugh	Equifax
Belfast Solicitors Association	Esslemont Cameron Gauld
Bell & Buxton, Solicitors	Euroclear UK and Ireland
Benjamin, Dr Joanna	European Bank for Reconstruction and
Benson, Ian	Development, The
Bingham, The Rt Hon Lord	Eversheds LLP
Birmingham Chamber of Commerce &	Experian
Industry	Faculty of Advocates, The
Blair, Mr Justice	Federation of Small Businesses
Bradgate, Professor Robert	Ferran, Professor Eilis
Bridge, Professor Michael	Finance and Leasing Association
British Bankers Association	Financial Markets Law Committee
British Chambers of Commerce	Financial Services Authority
Burness LLP	Forum of Private Business
Business Credit Management (UK) Ltd	Freshfields Bruckhaus Derliger
Capper, Professor David	Goode, Professor Sir Roy
Centrica	Graham, Peter
Chancery Bar Association	Graydon
Church of England, The Legal Office	Grier, Nicholas WS
of the National Institution	Gullifer, Louise
City of London Law Society	Hammond Suddards Edge
City of London Police	Hannigan, Professor Brenda
Civil Aviation Authority	Herbert Smith LLP
Clifford Chance LLP	Hermes Pensions Management Ltd
Commercial Bar Association	Hill Dickinson LLP

Hilliard, Lexa QC	Lovells LLP
HM Treasury	Maclay Murray & Spens
HPI Ltd	Manford, Bruce
Howells, Professor Geraint	Mayer Brown LLP
HSBC Bank plc	McCormick, Roger
Insolvency Lawyers Association	McKnight, Professor Andrew
Insolvency Practitioners Association	Mortimore, Simon QC
Insolvency Service	Moss, Gabriel, QC
Insolvency Service of Northern Ireland	National Australia Bank Group, The
Intellectual Property Office	Northern Ireland Law Commission
Institute of Chartered Accountants in England and Wales	Norton Rose LLP
Institute of Chartered Accountants in Ireland	Olswang LLP
Institute of Chartered Accountants in Scotland	Olswang LLP
Institute of Chartered Secretaries and Administrators	Payne Hicks Beach
Institute of Credit Management	Perkins, Joanna
Institute of Directors	Phillips, Mark QC
The Institute of Economic Affairs' Shadow Regulatory Policy Committee	Prentice, Professor Dan
Institute of International Shipping and Trade Law	Quoted Companies Alliance
Institutional Money Market Funds Association	Registers of Scotland
International Swaps and Derivatives Association	Registrar of Friendly Societies, the
International Underwriting Association	Riskdisk Ltd
Lacey, Dr John de	Royal Bank of Scotland
Land Registry in Northern Ireland	Scottish Land Agents Society
Land Registry, The	Scottish Law Commission, The
Law Commission, The	Scottish Law Society, The
Law Society, The	Serious Fraud Office, The
Law Society of Northern Ireland, The	Serious Organised Crime Agency, The
Law Society of Scotland, The	Sheldon, Richard
Linklaters llp	Simmons & Simmons LLP
Lloyd's	Slaughter and May LLP
Lloyds Register of Shipping	Small Business Bureau
Lloyds TSB Wholesale & International Banking	Smith, Peter
	Tods Murray LLP
	Trades Union Congress
	Travers Smith LLP
	UK Factors and Discounters Association
	Watson, Farley & Williams
	William Sturges & Co
	Wortley, Scott
	York Place Company Services
	Ziegel, Professor Jacob

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