

## New Security Registration Regime

### Executive summary

A new regime for registering charges under the Companies Act 2006 (“**CA 2006**”) will take effect on 6 April 2013, when the Companies Act 2006 (Amendment of Part 25) Regulations 2013 (the “**Regulations**”) come into force. The Regulations will replace the current registration regime in Part 25 CA 2006 with new provisions aimed at simplifying and modernising the outgoing regime. Provisions which have long attracted comment are streamlined and new, optional, online registration is introduced. This briefing highlights the key features of the new regime.

### All charges registrable unless specifically excluded

Under the new regime, all charges created by a UK-registered company are registrable unless the charge is (a) a cash deposit securing rent under a lease of land, (b) created by a member of Lloyd’s as security for its underwriting obligations or (c) excluded from registration under CA 2006 by any other Act. The latter includes the exceptions from registration under the Banking Act 2009 and the Financial Collateral Arrangements (No. 2) Regulations 2003.

### No criminal sanction for failure to register

The new regime abolishes criminal liability and default fines on the company for failure to deliver particulars. In practice, this will have limited impact as the other consequences for failure to deliver particulars to the registrar remain under the new regime – the charge will be void against a liquidator, administrator or creditor of the company and the money secured by the charge will become immediately payable.

### 21 days to deliver particulars

The period allowed for delivery of particulars to the registrar is 21 days beginning with the day after the date of creation of the charge. The Regulations include detailed rules specifying when a charge will be taken to be created for this purpose. For a charge created/evidenced by an instrument

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which is a deed that has been executed and has immediate effect on execution and delivery, that date will be the date of delivery.

## **Section 859D statement of particulars/new Companies House forms**

Under the new regime, the company, or any person interested in the charge, may deliver to the registrar for registration a “section 859D statement of particulars”. In practice, the new registration forms to be released by Companies House, including the main form MR01, will constitute a section 859D statement of particulars. These will be shorter than the outgoing forms and require considerably less information. They adopt a mainly tick-box approach and do not require details of the assets secured (other than land, ships, aircraft or intellectual property, which must be listed, so highlighting to those searching the register that relevant asset registries may also need to be searched) or details of the secured liability.

## **Certified copy, not original, of instrument to be delivered**

Under the new regime it is only necessary to deliver to the registrar with the section 859D statement of particulars a certified copy of the instrument creating or evidencing the charge. It is no longer necessary to deliver an original of the instrument. This is a practical development, which should smooth the process of making registrations. Companies House have specifically stated that originals should not be submitted as they will not be returned.

## **Redacting information from certified copy of instrument**

The registrar will retain the certified copy of the instrument creating or evidencing the charge on the register, and this will be available for public inspection. The new regime provides that the following, which may be sensitive and unsuitable for such inspection, are not required to be included in any certified copy of the instrument: (a) personal information relating to an individual (other than the individual’s name), (b) bank/securities account numbers or other identifiers and (c) signatures. This is likely to lead to a practice of redacting such information from the certified copy delivered to the registrar.

The availability of a certified copy of the charging instrument for public inspection may lead the parties to consider whether it includes any other sensitive information and, if so, whether it is appropriate for that information to be included in the security document.

## **Online registration**

The new regime provides the option to deliver particulars for registration either online via the Companies House website or by completing paper forms. In the short term, until any potential teething difficulties with online registration have been resolved, many are likely to continue to use paper forms for registration. In due course, electronic filing is likely to become more common.

This offers a quick, straightforward registration process and a reduced registration fee (£10, against £13 for a paper registration). Certain steps apply solely to online registration. These include a limit on the file size of the certified copy of the instrument (10MB) and the need for the person filing to have obtained from Companies House either a “company authentication code” or a “lender authentication code”.

## **Unique reference code for each charge**

In addition to providing a certificate of registration of the charge, the registrar will allocate to the charge a unique reference code, expected to be 12 digits. The registrar will place a note in the register recording that code, and the certificate will also state that code.

## **Single regime for UK-registered companies**

The Regulations introduce a single registration regime for UK-registered companies, covering England and Wales, Northern Ireland and Scotland. Although this consolidates the outgoing separate regimes, it is not expected to change the current practice of Northern Irish and Scottish counsel registering security created by Northern Irish and Scottish companies respectively.

## **Equivalent regime for limited liability partnerships**

The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 will apply the revised provisions of Part 25 CA 2006 to limited liability partnerships (“LLPs”), with such necessary modifications to make that Part apply to LLPs. This will therefore create an equivalent registration regime for charges created by LLPs on or after 6 April 2013.

## **Record-keeping by companies**

Under the new regime every company must keep available for inspection at its registered office or other permitted location a copy of (a) every instrument creating a charge capable of registration, (b) every instrument effecting a variation/amendment of such a charge, (c) in relation to certain types of information, any other document referred to in/incorporated into any relevant instrument and (d) any relevant translation. It is sufficient to keep certified copies, and not originals, of these documents.

## **Special rules about debentures/property acquired**

The new regime includes special rules applying to (a) charges ranking *pari passu* given for the benefit of holders of a series of debentures and contained in individual debentures or given by reference to another instrument (such as a trust deed) and (b) charges existing on property or undertaking which is acquired by a company. In broad terms these follow a similar approach to the regime applying to charges created by a company, but points of detail are

different. For example, no period for delivery of particulars to the registrar is specified in relation to charges on acquired property.

## Notifying additions to/amendments of charges

If a charge is amended by adding or amending certain terms (essentially negative pledges or terms varying/regulating the order of the charge's ranking), the company or chargee may deliver specified particulars to the registrar for registration.

## Releasing/enforcing security

The new regime revises the CA 2006 requirements in relation to registering the release of a registered charge and the satisfaction of a debt secured by a registered charge. This includes changes to the particulars to be delivered to the registrar and new forms to be issued by Companies House for this purpose.

Under the new regime, a person who (a) obtains an order for the appointment of a receiver or manager of a company's property or undertaking or (b) appoints such a receiver or manager under powers contained in an instrument is required to notify the registrar accordingly and provide specified information.

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