

Security registration reform – making things easier

Fundamental changes to the regime for the registration of UK company charges are due to be implemented on 6th April 2013. These changes are intended to improve and simplify the current regime – will this aim be achieved?

What are the benefits?

As from 6th April 2013, registration of security in the UK is set to become much simpler. Why? Because: (i) we will no longer have to complete long registration forms and will benefit from the ability to file electronically; (ii) charging documents will be available for public inspection, thus improving access to information on registered charges; and (iii) all charges will be registrable (save for certain limited exceptions), which will reduce uncertainty as to which charges should be registered. This briefing discusses the new regime and sets out a snapshot of the changes.

Which charges will need to be registered?

The new regime applies to all charges created by a UK incorporated company on or after 6th April 2013. Security created by overseas companies, even those with a registered place of business in the UK, does not require registration.

Currently, there is a list of registrable charges. The new regime makes all charges registrable (save for limited

exceptions for rent deposits, charges created by Lloyd's members in connection with underwriting and certain charges excluded by law, in particular security financial collateral arrangements). So those charges which are not now typically registered, such as fixed charges over shares, will become registrable.

Similar regulations for Limited Liability Partnerships are also due to be brought into effect on 6th April 2013.

How is a charge to be registered?

A form containing the required details needs to be filed (along with the appropriate documentation and fee) at Companies House by the relevant company. Form MR01 (which replaces the old Form MG01) will be the most commonly used form – this is for the registration of a charge created or evidenced by an instrument. A certified copy of the charging instrument - not as now an original - must be submitted along with the Form MR01. Submission may be completed electronically or on paper.

Once registered, Companies House will allocate each charge with a unique reference code through which

Key Issues:

- New system for the registration of charges from 6th April 2013
- All charges will become registrable bar certain limited exceptions
- Simpler forms and electronic or paper filing possible
- Certified copy of actual charging instrument to be filed and available for public viewing – care required as to content

the charge can be tracked on the database. The Registrar of Companies must register a charge if the required details and documentation are submitted. As now, a certificate of registration issued by the Registrar is conclusive evidence that the documents required to be delivered were delivered within the relevant period.

Electronic filing – sounds easy!

In theory, electronic filing should make the whole process much easier and quicker. In practice, as with any new system, it may take time for the relevant interested parties to become

comfortable with it. In any event, hard copy filing will continue to be available after 6th April 2013.

What are the changes to the forms?

Form MR01 is much shorter than the current equivalent: less information needs to be detailed on the form as a certified copy of the charging instrument must be submitted with the form and will be available for viewing on the public database at Companies House.

The form contains a number of "tick box" questions (such as for the existence of a floating charge or a negative pledge). Short details of the charged asset will need to be completed where any land, ship, aircraft or intellectual property that is registered or required to be registered in the UK is charged – this puts anyone searching the Companies House register on notice that other relevant asset-based registries (such as the Land Registry or Civil Aviation Authority) may also need to be searched.

In addition, as each charge will be allocated a unique reference code, this means that subsequent forms filed in relation to a charge (e.g. relating to satisfaction or release of a charge) will be simpler as the original charge can be tracked through reference to its unique reference code.

Are there any concerns with making the charging instrument public?

This depends on the information that is contained in the charging instrument. The relevant parties will

want to ensure that the charging instrument does not contain any commercially sensitive information as the legislation only provides for limited redaction for personal information, signatures and bank account details. This point will need to be considered by transactional parties on an ongoing and case by case basis, particularly in light of the nature of assets secured and their description in the charging instrument.

It is also worth bearing in mind that in completing the longer Form MG01 under the current regime, it is already common practice to include a comprehensive description of the security package which is extracted from the security instrument. Making the charging instrument public should therefore not be controversial.

In addition, if the required details of the charge or of the charged assets are not contained in the charging instrument, but are contained in other documents, the company must keep those other documents available for public inspection. Companies may, therefore, find themselves receiving requests from interested third parties to review documentation, which would otherwise have remained private. To avoid this, care should be taken to ensure that any commercially sensitive documents do not contain this information, whether by means of cross-referencing or otherwise.

It should become clearer over time what level of detail in the particulars of the charged assets is required. The government has indicated in its explanatory notes to the Regulations that it expects "adequate information" to be given. It is worth noting that, whilst Companies House will not have "new powers to assess the completeness of the information provided", it may "review practice in the future if necessary".

What happens if a charge is not registered?

There will no longer be criminal sanctions for failure to register a charge. However the sanction of invalidity remains so that, as is the case now, failure to submit the requisite documentation for registration within 21 days (beginning with the day after the date of the charge) means that the charge will be void against liquidators, administrators or creditors of the company and the amount secured by the charge will become immediately repayable.

In practice, therefore, this means that all parties interested in the charge will be as keen as ever to ensure that registration is effected on a timely basis. As a last resort, there continues to be statutory provision for an application to the court for an extension of the 21 day time limit, which it is likely to do so only in exceptional circumstances

Note that the extra time for registration given under the current regime where the charge has been created overseas, is being removed. From 6th April 2013 charges, whether created in or outside of the UK, will be subject to the same 21 day registration period.

So, will the new system improve and simplify the process of registering charges?

The basis for the new registration regime is sound and should bring improvements. Any attempt to streamline what has previously been a cumbersome and expensive process must be welcomed. As with any new system, there are some uncertainties but these should be

resolved as those responsible for filing and Companies House adjust to the new requirements.

Snapshot of Key Changes to Registration of English Security in the UK

Current regime	New regime
Applies to charges created up to 5 th April 2013	Applies to charges created on or after 6 th April 2013
Applies to all companies incorporated in the UK (but not overseas companies, even if they have a registered place of business in the UK)	No change
Certain charges must be registered: <ul style="list-style-type: none"> ■ Charge over land ■ Charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ■ Charge securing any issue of debentures ■ Charge on uncalled share capital ■ Charge on calls made but not paid ■ Charge on book debts ■ Floating charge ■ Charge on ship or aircraft, or any share in a ship ■ A charge on goodwill or IP <i>Note: 'charge' includes mortgage</i>	All charges must be registered except: <ul style="list-style-type: none"> ■ a charge in favour of a landlord on a cash deposit given as a security in connection with the lease of land ■ a charge created by a member of Lloyd's to secure its obligations in connection with its underwriting business at Lloyd's ■ a charge excluded from the application of the Regulation by or under any other Act <i>Note: 'charge' includes mortgage</i>
Submit original security document for registration, which is returned following registration	Submit certified copy of security document for registration, which is filed on database and is available for public viewing
Hard copy paper filing using longer Form MG01	Hard copy paper filing and e-filing using shorter Form MR01
Form MG01 appears on register as a standalone record of the charge. Details of the security and secured assets taken directly from the security document	Form MR01 appears on register and requires fewer details to be completed because a certified copy of the security document appears on the register for inspection
No equivalent provision	Redaction of personal information, bank account details and individuals' signatures
No equivalent provision	If the particulars required to be filed by the Act or particulars of the property or undertaking charged are not contained in the security document, but in another document, the company must make that other document available for inspection
No equivalent provision	Guidance to determine date of creation of charge
Registration period of 21 days beginning with the day after the date of creation	No change

Current regime	New regime
Money secured becomes immediately repayable and security is void against liquidator, administrator or creditor of the company if not filed within 21 days	No change
Criminal offence is committed by the company and any officers in default if security is not filed within 21 days	No equivalent provision
Extra time for registration if charge is executed overseas	No equivalent provision
Certificate of charge issued by the Registrar of Companies is conclusive evidence that the documents required for registration were delivered within 21 days	No change
No equivalent provision	Unique reference code is allocated to each charge

Contacts:

[Mark Campbell](#)

T: +44 (0) 20 7006 2015

[Roderick McGillivray](#)

T: +44 (0) 20 7006 2035

[Damian Perry](#)

T: +44 (0) 20 7006 4227

[Kate Gibbons](#)

T: +44 (0) 20 7006 2544

[Karen Lester](#)

T: +44 (0) 20 7006 2633

[Helen Walsh](#)

T: +44 (0) 20 7006 2813

[Katie Hoyle](#)

T: +44 (0) 20 7006 4528

[Marisa Chan](#)

T: +44 (0) 20 7006 4135

[Kate Wild](#)

T: +44 (0) 20 7006 2345

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2013

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.