



News from the Law Commission

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Law Commission consults on Provisional Recommendations on Company Security Interests

The Law Commission has today put forward for consultation its provisional recommendations on Company Security Interests. Law Commissioner Professor Hugh Beale QC FBA said:

“We are keen to receive comments on these provisional recommendations. We believe that they would provide significant improvements and cost-savings in secured finance for companies. The use of technology can make the registration of company charges much easier, cheaper and quicker. The low cost of registration makes it feasible to provide lenders with a wider range of useful information about a company’s property. The law on the priority of competing interests and the remedies available in the case of default can be made simpler, clearer and better suited to the needs of modern business finance.”

Why is change needed?

The current registration requirements date from over a hundred years ago; they are paper-based and very cumbersome and expensive for what they achieve. Registering a charge can involve substantial legal fees.

The list of charges that must be registered is out of date. Some charges, for example over land, often require registration in two registers. Transactions that technically are not ‘charges’, but that fulfil a very similar economic function, do not require registration at all.

The rules of priority of competing interests are complex, unclear and unsuited to the needs of modern methods of business finance. The remedies available on default are unnecessarily complex, varying from one security device to another.

What is the Law Commission proposing?

The provisional recommendations propose replacing the current law on registration of mortgages and charges created by companies over their assets. Instead, ‘notice-filing’ would be done online by the secured party, not the company.

On-line notice-filing would be simple – legal expertise will not be necessary, and regular users will be able to transmit data from their own electronic records to the register by a keystroke – and would take minutes. Mortgages over land would be excluded from the scheme: they would have to be registered only at the land registry, not in two registers as at the moment.

The proposals offer clear priority rules for competing charges that fit modern methods of business finance.

Taking advantage of the ease and low cost of electronic registration, the Law Commission also proposes that the system is used to give information about transactions that are not currently registrable as ‘charges’ but that fulfil a very similar economic function, for example:

- sales of debts due to the company (‘receivables’), and
- ‘title-financing’ such as conditional sales, hire-purchase and finance leases, with appropriate priority rules to protect the financier.

The proposals set out an effective scheme of remedies. The same remedies would be available for most types of security interest.

Who would it affect?

Any company that wants to borrow, obtain equipment or inventory on credit or to raise an advance against its future income might be helped by the scheme. Secured finance is particularly important for SMEs that have not yet built up the kind of credit rating to borrow on an unsecured basis. Secured borrowing in financial markets would also benefit.

The scheme will affect only charges and other security interests created by companies and Limited Liability Partnerships. But the report provisionally recommends that the scheme be extended as soon as possible to unincorporated businesses - for whom the current registration requirements are even more antiquated and very restrictive.

Further information

The consultative report is very detailed, to enable specialist consultees to evaluate the scheme – and particularly the extension to title-finance – fully. Further general information will be found in the Executive Summary in the Consultative Report.

Background

These provisional recommendations will be considered in light of comments from all recipients. It is intended that the regulations in the report would be brought into force under a future Department for Trade and Industry Companies Bill.

The initial Consultation Paper (CP164) was published in July 2002. The 358 page Consultative Report will be accessible from the website on 18 August and available in hardcopy from 1 September. Responses are requested by 23 November.

NOTES FOR EDITORS

1. The provisional recommendations can be accessed from:
<http://www.lawcom.gov.uk/239.htm>

2. The Report will also be accessible from the Law Commission website via the link to the Publications page.

3. For all press queries please contact:
Jessica Litten tel: 020 7453 1273
Communications Manager

Dan Leighton tel: 020 7453 1235
Editor

E-mail: communications@lawcommission.gsi.gov.uk

4. The Commercial and Common Law Team:
Professor Hugh Beale tel: 020 7453 1203
Commissioner

James Robinson tel: 020 7453 1201
Lawyer

Law Commission, Conquest House, 37-38 John Street, Theobalds Road, London WC1N 2BQ
Tel: 020-7453-1220 (General Enquiries) 020-7453-1273 (Press Enquiries)
Web: <http://www.lawcom.gov.uk>