

**2006 No. xxxx**

**COMPANIES**

**The Company Security Regulations 2006**

*Made* - - - -

*Laid before Parliament*

*Coming into force* - -

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The Secretary of State in exercise of the powers conferred on him by sections [x, y and z of the Companies Act 2006] hereby makes the following Regulations:

## PART 1

### INTRODUCTION

#### *Citation and commencement*

#### **Citation and commencement**

- 1.—(1) These Regulations may be cited as the Company Security Regulations 2006.
- (2) These Regulations come into force on [date].

#### *Scope of the Regulations*

#### **Companies registered in England and Wales**

- 2.—(1) These Regulations apply to—
  - (a) any charge or pledge created by a company registered in England and Wales over any of its property (wherever situated), and
  - (b) any sale of receivables by a company registered in England and Wales.

(2) If the property is situated in a jurisdiction outside England and Wales, these Regulations do not affect any right acquired in, or in relation to, the property in accordance with the law of that jurisdiction.

- (3) In these Regulations—

“charge” includes a mortgage,

“receivables” means monetary obligations, whether or not earned by performance, arising from—

- (a) the supply of goods or services (other than insurance services),
- (b) the supply of energy, or
- (c) brokerage fees, and

“sale”, in relation to receivables, includes an agreement to sell.

### Other companies

**3.—**(1) These Regulations also apply to any charge or pledge created by a company registered in Scotland, or by a company registered elsewhere than in Great Britain (a “foreign company”), over its property situated in England and Wales.

(2) For the purposes of paragraph (1)—

- (a) an aircraft is treated as situated in England and Wales while it is registered in the UK Aircraft Register of Civil Aircraft maintained under the Air Navigation Order 2000<sup>(a)</sup>, even if it is not in England and Wales at the time in question, and
- (b) a ship is treated as situated in England and Wales while it is registered in Part 1, 2 or 3 of the register of British ships maintained under section 8(1) of the Merchant Shipping Act 1995<sup>(b)</sup>, even if it is not in England and Wales at the time in question;

but an aircraft or ship which is registered only under the law of any other jurisdiction does not fall within paragraph (1), even if it is in England and Wales at the time in question.

### Exceptions

**4.—**(1) These Regulations do not apply to—

- (a) a lien, charge or other interest arising under an enactment or rule of law,
- (b) the assignment of an unearned right to payment under a contract to a person who is to perform the transferor’s obligations,
- (c) the assignment of receivables solely to facilitate collection on behalf of the person making the assignment,
- (d) the assignment of a single receivable to an assignee in full or partial satisfaction of a pre-existing indebtedness,
- (e) the sale of receivables as part of the sale of a business out of which the receivables arose,
- (f) a fixed charge which is registered, or the subject of a notice, under the Land Registration Act 2002<sup>(c)</sup>, or
- (g) a charge arising from the creation of a Lloyd’s relevant trust fund, other than a Lloyd’s deposit.

(2) Paragraph (1) is subject to these Regulations and in particular to regulations 25 and 31 (which affect the priority of certain charges over land and liens).

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(a) S.I. 2000/1562.  
(b) 1995 c. 21.  
(c) 2002 c. 9.

## PART 2

### REGISTRATION OF CHARGES AND SALES OF RECEIVABLES

#### **The Register**

5.—(1) The Registrar of Companies (“the Registrar”) must establish and maintain a register of charges and of sales of receivables (“the register”).

(2) An application for registration of a charge, or a sale of receivables, must be made by filing a financing statement that satisfies the requirements of these Regulations and the Rules.

(3) The person filing a financial statement must confirm that the charge or sale to which it relates has been made or that the debtor consents to the filing.

(4) A financing statement that does not meet the requirements of these Regulations or of the Rules may be rejected by the Registrar.

(5) A financing statement may also be rejected by the Registrar if—

- (a) the prescribed filing fee is not paid, or
- (b) an arrangement for paying the filing fee is not in place.

(6) In these Regulations—

“prescribed” means prescribed by the Rules,

“registered”, in relation to a charge or a sale of receivables, means (except in the context of registration in a specialist register in regulation 25) that a financing statement relating to it—

- (a) has been registered,
- (b) is not ineffective because of regulation 9 (errors), and
- (c) has not expired or been discharged,

and “unregistered” is to be read accordingly, and

“Rules” means rules made by the Registrar in accordance with section [x of the Companies Act 2006].

#### **Financing statement**

6.—(1) A financing statement—

- (a) may be filed before or after the charge or sale to which it relates is made,
- (b) may relate to more than one charge or sale, and
- (c) must include the required information.

(2) The required information is—

- (a) the name of the debtor,
- (b) the debtor’s registered number (if any),
- (c) the name and address of the chargee or buyer, or its agent (if any),
- (d) a description of the collateral,
- (e) whether the filing is to continue indefinitely or until a specified date, and
- (f) such other information as may be prescribed by the Rules.

(3) A financing statement may also disclose whether the chargee is a trustee.

(4) Paragraphs (2) and (3) are subject to regulation 9 (errors).

(5) In these Regulations—

“chargee” means a person in whose favour a charge is created, including a trustee or any other party who holds a charge for the benefit of another person;

“collateral” means—

- (a) property subject to a charge or pledge, or
- (b) receivables that have been sold,

“debtor” means—

- (a) a company whose property is subject to a charge or pledge, whether to secure its own obligation or that of another,
- (b) a company which sells receivables, or
- (c) a transferee of, or successor to, a company falling within paragraph (a) or (b) of this definition, and

“registered number”, in relation to a company, has the same meaning as in the [Companies Act 2006].

### **When registration is effective**

7.—(1) A filed financing statement is registered when a date, time and number (“the financing statement number”) are assigned to it by the Registrar.

(2) The financing statement number determines the order of registration in the event of two or more financing statements being registered with the same date and time.

(3) Registration continues to be effective—

- (a) until it is discharged, or
- (b) if the financing statement specifies a date on which registration is to end, and the registration has not by then been discharged, until that date.

(4) This is subject to regulation 9 (errors).

### **Verification statement**

8.—(1) As soon as is reasonably practicable after registration of a financing statement, the Registrar must send a statement (a “verification statement”) to—

- (a) the person (“P”) named in the financing statement as the chargee or buyer or its agent, and
- (b) the debtor.

(2) But if the debtor is a foreign company which has not registered a place of business or branch in Great Britain under the [Companies Act 2006], the Registrar may instead require P to forward a copy of the verification statement to the debtor within 10 business days of receiving it.

(3) Paragraph 1(a) does not apply if P has notified the Registrar in writing that he does not require copies of verification statements.

(4) Paragraphs (1)(b) and (2) do not apply if the debtor has notified the Registrar in writing that he does not require copies of verification statements.

(5) A verification statement must include—

- (a) the information contained in the financing statement,
- (b) the financing statement number, and
- (c) the date and time of registration.

### **Errors in financing statement**

**9.**—(1) The registration of a financing statement is ineffective to register a charge or sale if it contains a defect such that its existence would not be discovered by a reasonable search under regulation 15.

(2) But the registration is not otherwise affected by any defect in the financing statement.

(3) If the debtor has changed its name, the fact that a person searching under its previous name might not discover the existence of the financing statement does not, of itself, make the registration ineffective.

(4) Nothing in paragraph (1) requires a search to have been carried out.

(5) Failure to provide a description in a financing statement in relation to any collateral does not make the registration ineffective with respect to other collateral described in the financing statement.

(6) “Defect” includes an irregularity, omission or error.

### **Additional statements**

**10.**—(1) In these Regulations “additional statement” means a statement that satisfies the requirements of these Regulations and the Rules and is filed by the chargee or buyer or its agent under—

- (a) regulation 11 (extension or discharge of registration),
- (b) regulation 12 (amendment of financing statement),
- (c) regulation 13 (notice of transfer), or
- (d) regulation 14 (notice of subordination),

or under regulation 16 (debtor etc may require additional statement).

(2) An additional statement that does not meet the requirements of these Regulations or of the Rules may be rejected by the Registrar.

(3) An additional statement may also be rejected by the Registrar if—

- (a) the prescribed filing fee is not paid, or
- (b) an arrangement for paying the filing fee is not in place.

### **Extension or discharge of registration**

**11.**—(1) The registration of a financing statement may, at any time before it expires, be extended or discharged by filing an additional statement.

(2) A registration which is extended continues to have effect until—

- (a) the date specified in the additional statement, or
- (b) if earlier, the date on which the registration is discharged.

### **Amendment of financing statement**

**12.**—(1) A registered financing statement may, at any time before it expires, be amended by filing an additional statement.

(2) The additional statement is registered when a date, time and number are assigned to it by the Registrar.

### **Notice of transfer**

**13.**—(1) If, in relation to a registered charge or registered sale, the chargee or buyer transfers an interest in collateral, an additional statement disclosing the transfer may be filed.

(2) For the avoidance of doubt, the transferee of a registered charge, or of receivables which are the subject of a registered sale, is not required to file an additional statement in order to continue the effectiveness of the registration against an administrator or liquidator or a person mentioned in regulation 20(4) or 36(2) (execution creditors etc).

(3) If an additional statement is filed under paragraph (1), and an interest in part of the collateral is transferred, the statement must include a description of the collateral in which the interest is transferred.

(4) If, in relation to an unregistered charge or sale of receivables, the chargee or buyer transfers an interest in collateral, a financing statement may be filed in which the transferee is disclosed as the chargee or buyer.

(5) An additional statement disclosing a transfer of a charge or of the sale of receivables may be filed before or after the transfer.

(6) Once an additional statement is registered, the transferee is to be treated as the chargee or buyer for the purposes of these Regulations.

### **Notice of subordination**

**14.**—(1) If a charge or sale of receivables has been subordinated by the chargee or buyer to the interest of another person, an additional statement may be filed disclosing the subordination.

(2) The additional statement may be filed at any time before the registration of the financing statement relating to the charge or sale expires.

### **Searches**

**15.**—(1) Any person may search the register, subject to any condition or exception imposed by the Rules, including in particular any requirement to pay a prescribed fee.

(2) The register must be organised so as to permit searches using one or more of the following criteria—

- (a) the name of the debtor,
- (b) the registered number of the debtor (if any),
- (c) the financing statement number,

and any additional criteria permitted by the Rules.

(3) A search result that purports to be authorised by the Registrar, whether printed by the Registrar or by any other person, may be received in evidence as prima facie proof of its contents.

## Debtor etc may require additional statement

### 16.—(1) If—

- (a) a financing statement is registered, and
- (b) one of the conditions set out in column 1 of the Table is satisfied,

the debtor, or any person with an interest in property which falls within the description of the collateral in the financing statement, may give a notice in writing (a “requirement notice”) to the person (“P”) named in the financing statement as chargee, buyer or its agent.

### (2) The requirement notice must—

- (a) specify the condition which is satisfied,
- (b) require P to file an additional statement with the effect indicated in column 2 of the Table relating to that condition, and
- (c) inform P that failure to comply with the requirement notice may result in the person who gives the notice filing the appropriate additional statement.

## Table

### Additional statements

<i>1. Condition</i>	<i>2. Effect</i>
That the obligations under all of the charge agreements or sale agreements to which the financing statement relates have been performed.	To discharge the registration.
That the chargee or buyer has agreed to release part or all of the collateral described in the financing statement.	To amend or discharge the registration so as to reflect the terms of the agreement.
That the description of the collateral in the financing statement includes an item or kind of property that is not collateral under a charge agreement or sale agreement between the chargee or buyer and the debtor.	To amend the collateral description to exclude items or kinds of property that are not collateral under a charge agreement or sale agreement between the chargee or buyer and the debtor.
That no charge agreement or sale agreement exists between the persons named in the financing statement as the chargee or buyer and the debtor.	To discharge the registration or, where that debtor is not the sole debtor, to amend the registration.

(3) If the person who gives a requirement notice is not the sole debtor, he must give a copy of the requirement notice to every other debtor to whom the financing statement relates within 5 business days of the requirement notice being given to P.

(4) The person who gives a requirement notice may file an additional statement as requested in the requirement notice if P does not, within 15 business days after the notice is issued—

- (a) comply with the requirement notice, or
- (b) commence proceedings in the appropriate court for an order to maintain the registration to which the notice relates and notify the person who gave the requirement notice and the Registrar accordingly.

(5) If the Registrar is notified under paragraph (4)(b) of the commencement of proceedings, he must, as soon as reasonably practicable, amend the register to show that the registration is the subject of a dispute.

(6) On an application by P to the appropriate court, the court may order that the registration—

- (a) be maintained on any condition and for any period of time that the court considers appropriate, subject to regulations 7(3), 11(2) and 12 (duration, extension and amendment), or
- (b) be discharged or amended.

(7) If a court order is not obtained within 90 business days of the commencement of proceedings or such longer period as the court may direct, the person who gave the requirement notice may file an additional statement as requested in the requirement notice as if P had not complied with paragraph (4).

(8) Paragraphs (4) to (7) do not apply to a trust case.

(9) In a trust case, the appropriate court may, on an application by the person giving the requirement notice, make an order directing that the registration be amended or discharged if—

- (a) one or more of the conditions in paragraph (2) are satisfied, and
- (b) the chargee or its agent does not comply with the requirement notice within 25 business days after the notice is issued;

and the court may make such other orders as it thinks proper for the purpose of giving effect to the order.

(10) In this regulation—

“the appropriate court” has such meaning as may be prescribed;

“trust case” means a case in which the financing statement discloses that the chargee is a trustee.

(11) Notices under this regulation must be given in the prescribed form and manner.

### **Entitlement to damages for incorrect filing etc**

17.—(1) If a person (without having a reasonable excuse)—

- (a) files a financing statement confirming the existence of a charge agreement or sale agreement which does not in fact exist, or
- (b) files a financing statement confirming that the debtor has consented to the filing when the debtor has not in fact consented,

the debtor has a right to recover damages from him for any loss or damage that was reasonably foreseeable as likely to result from the filing.

(2) If a person (without having a reasonable excuse) fails to forward a copy of the verification statement to the debtor within 10 business days of receiving it as required under regulation 8(2) (verification statement), the debtor has a right to recover damages from him for any loss or damage that was reasonably foreseeable as likely to result from the filing.

### **Requirement to notify Registrar about appointment of receiver**

**18.**—(1) A person who—

- (a) obtains an order for the appointment of a receiver or manager of a company's property, or
- (b) appoints a receiver or manager of a company's property under powers contained in an instrument,

must notify the Registrar of that fact within 7 days of the order or appointment.

(2) A receiver or manager of a company's property appointed under powers contained in an instrument who ceases to act as such must, on so ceasing, notify the Registrar.

(3) The Registrar must enter information notified under paragraph (1) and (2) in the register.

(4) A notice under this section must be in the prescribed form and manner.

(5) A person who fails to comply with this regulation is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 and to a fine not exceeding one-tenth of that level for each day on which the failure continues.

### **Filing is not notice**

**19.**—(1) The filing of a financing statement or additional statement does not constitute notice or knowledge of its existence or contents to any person.

(2) A purchaser of collateral is not required to enquire whether—

- (a) the collateral has been charged or pledged or, in the case of receivables, sold, or
- (b) whether the disposition constitutes a breach of the terms of the charge.

**PART 3**  
**EFFECTIVENESS OF CHARGES ETC**

**Effectiveness of charge or sale of receivables in insolvency proceedings**

**20.**—(1) A charge or a sale of receivables is not effective against an administrator or liquidator unless, before the onset of insolvency,—

- (a) it is registered,
- (b) in the case of a supporting obligation, the charge over the obligation it supports is registered,
- (c) in the case of a right to the proceeds of collateral arising other than only as a result of the terms of a floating charge, if the charge over the original collateral is registered, or
- (d) in the case of a charge over sums due under a letter of credit, regulation 26(5) is satisfied.

(2) Paragraph (1) does not apply in the case of a sale of receivables if the sale (by itself or in conjunction with other sales to the buyer) is of such a small proportion of the assignor's receivables that it would not influence a reasonable person deciding whether to make an advance to the company; and for the purposes of Part 4 (priority) such a sale of receivables is to be treated as having been registered at the date of the sale.

(3) “Onset of insolvency” means—

- (a) if an administrator of a company is appointed by administration order, the date on which the administration application is made,
- (b) if an administrator of a company is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986<sup>(a)</sup> (appointment of administrator by the holder of a qualifying floating charge, or by the company or its directors) following filing with the court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
- (c) if an administrator of a company is appointed otherwise than under sub-paragraph (a) or (b), the date on which the appointment takes effect,
- (d) if a company goes into liquidation, the date of the commencement of the winding-up.

(4) A charge or interest arising under a sale of receivables is subordinate to the interest of a person—

- (a) who causes the collateral to be seized in accordance with due process to enforce a judgment, including execution, attachment or garnishment, or
- (b) who has obtained a charging order or equitable execution which affects or relates to the collateral,

unless the charge or sale falls within paragraph (1)(a) to (d) at the time that person's interest arises.

(5) This regulation does not apply to charges to which regulation 36 applies (effectiveness of charge over investment property or cash in insolvency proceedings).

**Charges over imported goods**

**21.**—(1) Paragraph (2) applies to a charge over imported goods—

- (a) created by a company registered in Scotland or a foreign company, and
- (b) perfected under the law of any jurisdiction in which the goods were located (“the first jurisdiction”) before being imported.

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(a) 1986 c. 45.

(2) For the purposes of these Regulations, a charge remains effective against an administrator or liquidator or a person mentioned in regulation 20(4) or 36(2) (execution creditors etc) if it is registered—

- (a) not later than 60 business days after the day on which the goods were imported, or
- (b) before perfection ceases under the law of the first jurisdiction,

whichever is the earlier.

(3) For the purposes of Part 4 (priority), a charge which remains effective under paragraph (2) has priority from the date on which it was first perfected under the first jurisdiction.

(4) But a charge which remains effective under paragraph (2) is subordinate to the interest of a transferee (other than a chargee or pledgee) who takes possession or delivery of the goods—

- (a) after the goods have been imported,
- (b) without knowledge of the charge, and
- (c) before the charge is registered.

(5) “Imported” means brought into England and Wales.

(6) “Perfected”, in relation to a charge, means that all necessary steps have been taken to render it effective against third parties and in insolvency proceedings under the law of the jurisdiction in question; and “perfection” has a corresponding meaning.

### **Pledge treated as charge if collateral made available to debtor**

**22.**—(1) This regulation applies to a pledge of a negotiable instrument (including a certificated financial instrument in bearer form) which the pledgee delivers to the debtor for the purpose of –

- (a) sale or exchange,
- (b) presentation, collection, enforcement, renewal, or registration of a transfer.

(2) This regulation also applies to a pledge of—

- (a) a negotiable document of title to goods, or
- (b) goods held by a bailee which are not covered by a negotiable document of title,

if the pledgee makes the document of title or goods available to the debtor for any of the purposes mentioned in paragraph (3).

(3) The purposes are—

- (a) sale or exchange,
- (b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange.

(4) For the period during which the collateral is made available to the debtor, a pledge to which this regulation applies and any right of the pledgee to the proceeds of disposition of the collateral is treated as a charge over the collateral and its proceeds which, for the first 15 business days of that period, need not be registered to be effective against an administrator or liquidator or a person mentioned in regulation 20(4) or 36(2) (execution creditors etc).

(5) For the purposes of Part 4 (priority) and without prejudice to regulation 39 (special priority rules for investment property and cash), a pledge to which this regulation applies has priority from the date it was created if—

- (a) the collateral is returned or the proceeds transferred to the pledgee within the 15 day period mentioned in paragraph (4), or
- (b) it is registered as a charge within that 15 day period and remains registered until the collateral is returned or the proceeds transferred to the pledgee.

## **Attornment by debtor**

23. These Regulations apply to a pledge under which the debtor has possession of collateral and attorns to the pledgee as if the pledge were a charge.

## **PART 4**

### **PRIORITY**

#### *Priority rules*

#### **Residual rules**

24.—(1) The following provisions apply if these Regulations do not otherwise determine priority between conflicting charges, sales of receivables and pledges.

(2) A registered charge or sale of receivables has priority over an unregistered charge or sale of receivables.

(3) Priority between registered charges and registered sales of receivables is determined by the order of registration of the relevant financing statements.

(4) Priority between unregistered charges and unregistered sales of receivables is determined by the order of creation or sale.

(5) Priority between a charge and a pledge is determined by whether the financing statement relating to the charge is registered before the pledge is created.

(6) A transferee of a charge or pledge acquires the same priority with respect to the charge or pledge as the transferor had at the time of transfer.

(7) A charge over, or sale of, a supporting obligation has the same priority as the charge over, or sale of, the principal obligation which it supports.

(8) Any right to the proceeds of collateral arising other than only as a result of the terms of a floating charge has the same priority as the charge over the original collateral.

(9) A registered charge over crops growing on land has priority over a conflicting interest in the land if the debtor has an interest in or is in occupation of the land.

(10) The priority that a charge, pledge or sale of receivables has under this regulation applies to all advances, including future advances, whether or not made under an obligation.

(11) Paragraph (10) applies to give a registered charge or a pledge priority over the interests of persons mentioned in regulation 20(4) (execution creditors etc) only to the extent of—

(a) advances made before—

(i) the interests of those persons arise, or

(ii) those persons seize the collateral or obtain a right to it,

(b) advances made before the chargee or pledgee acquires knowledge of the interests of those persons,

(c) advances made under—

(i) a statutory requirement, or

(ii) a legally binding obligation which was entered into by the chargee or pledgee before acquiring the knowledge mentioned in sub-paragraph (b), and

(d) such costs and expenses as were provided for in the charge or pledge agreement or, in the absence of such agreement, reasonable costs and expenses incurred by the chargee or pledgee for the protection, preservation, maintenance or repair of the collateral.

(12) For the purposes of this regulation, the priority of a contractual lien dates from—

(a) the agreement for the lien, or

(b) the date on which the goods come into possession of the lienee,

whichever is later.

(13) “Advance” means the payment of money, the provision of credit or other giving of value, and includes any entitlement to interest, credit costs and other charges or costs payable in connection with an advance or the enforcement of a charge or pledge securing the advance.

### **Conflict with transactions registered in specialist registers**

**25.**—(1) Any conflict between—

- (a) a registered or unregistered charge, and
- (b) a transaction which is registered in a specialist register,

is to be determined in accordance with the priority rules in the enactments governing the specialist register, subject to paragraphs (2) to (4).

(2) If the conflict is between—

- (a) a floating charge created by a company over unregistered land and any other charge over the same land, or
- (b) a floating charge created by a company over registered land and any other transaction over the same land except a legal purchase,

the floating charge has priority if the financing statement relating to it was registered under these Regulations before the competing transaction was registered in the specialist register or the financing statement relating to it was registered under these Regulations.

(3) If the conflict is between a fixed equitable charge created by a company over registered land and any other transaction over the same land other than a legal mortgage or other legal purchase, the fixed equitable charge has priority if it was registered in the specialist register or the financing statement relating to it was registered under these Regulations before the competing transaction was registered in the specialist register or the financing statement relating to it was registered under these Regulations.

(4) Paragraphs (2) and (3) are without prejudice to sections 28 to 30 of the Land Registration Act 2002**(a)** (effect of dispositions on priority) and rules 147 to 154 of the Land Registration Rules 2003**(b)** (official searches with priority).

(5) “Specialist register” means a register established under any of the following enactments—

- (a) the Land Charges Act 1972**(c)**,
- (b) the Land Registration Act 2002,
- (c) the Merchant Shipping Act 1995**(d)**,
- (d) the Mortgaging of Aircraft Order 1972**(e)**,
- (e) the Patents Act 1977**(f)**,
- (f) the Registered Designs Act 1949**(g)**, and
- (g) the Trade Marks Act 1994**(h)**.

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(a) 2002 c.9.  
(b) S.I. 2003/1417.  
(c) 1972 c. 61.  
(d) 1995 c. 21.  
(e) S.I. 1972/1268.  
(f) 1977 c. 37.  
(g) 1949 c. 88.  
(h) 1994 c. 26.

### **Sums due under letters of credit**

**26.**—(1) The following provisions govern priority between conflicting charges over the same sums due under a letter of credit.

(2) A charge held by a chargee who has command of the sums due under the letter of credit has priority over a conflicting charge held by a chargee who does not have command.

(3) Conflicting charges under which each chargee has command rank according to priority in time of obtaining command.

(4) In all other cases, priority among conflicting charges in the same sums due under a letter of credit is governed by regulation 24 (residual priority rules).

(5) A chargee has command of the sums due under a letter of credit to the extent of any right to payment or performance by the issuer or any nominated person—

(a) where the issuer or nominated person is bound or compelled under any enactment, instrument or rule of law to receive notice of an assignment or charge, if the chargee has notified the issuer or nominated person of its assignment of, or fixed charge over, the sums due under the letter of credit, or

(b) if the issuer or nominated person is not so bound or compelled, the chargee has obtained the agreement of the issuer or nominated person that the debtor will no longer be able to deal with the sums due under the letter of credit without the agreement of the chargee.

(6) “Nominated person” means a person whom the issuer—

(a) designates or authorises to pay, accept, negotiate or otherwise give value under a letter of credit, and

(b) undertakes by agreement or custom and practice to reimburse.

### *Transfers*

### **Priority of charges in transferred collateral**

**27.**—(1) If the debtor acquires property subject to a charge (“charge A”) created by a company other than the debtor, charge A has priority over any charge over the same property created by the debtor if—

(a) charge A was registered when the debtor acquired the collateral, and

(b) there is no period after the debtor acquired the collateral when charge A was not registered.

(2) If the debtor acquires property subject to a charge created by a person who is not a company, that charge has priority over any charge over the same property created by the debtor.

(3) Paragraphs (1) and (2) are subject to regulations 30 (protection of transferees of money, negotiable instruments etc), 38 (purchaser takes free: investment property) and 39 (special priority rules for investment property and cash).

### **Transfer of collateral free of unregistered charge**

**28.**—(1) A transferee of collateral subject to an unregistered fixed charge who—

(a) gives value, and

(b) if the collateral is tangible, takes possession or delivery of it,

takes free of the charge unless he has knowledge of its existence.

(2) For the purposes of paragraph (1), a transferee of a negotiable instrument or the holder of a negotiable document of title, who acquired the negotiable instrument or negotiable document of title in a transaction which was in the ordinary course of the transferor's business, has knowledge of the charge only if the transferee or holder acquired the interest with knowledge—

(a) of the existence of the charge, and

(b) that the transaction is in breach of the terms of the charge.

(3) A transferee of collateral subject to a unregistered floating charge, who acquired the collateral in a transaction which was in the ordinary course of the transferor's business, takes free of the charge unless the transferee knew that the transfer was in breach of the terms of the floating charge.

(4) Paragraph (3) applies regardless of whether the charge was, as created, a floating charge or a fixed charge.

(5) For the purposes of this regulation—

(a) a charge falling within regulation 20(1)(b) or (c) or regulation 36(1)(e) or (f) (supporting obligation and proceeds) is to be treated as registered;

(b) “transferee” does not include chargee, pledgee or buyer of receivables.

(6) This regulation does not apply to a transfer which is in total or partial satisfaction of a money debt or antecedent liability.

### **Circumstances in which transferee takes collateral free of registered charge**

**29.**—(1) A transferee of collateral subject to a registered charge which is a fixed charge takes subject to the charge unless the chargee has authorised the transfer.

(2) A transferee of collateral subject to a registered charge which—

(a) as created was a floating charge, or

(b) as created was a fixed charge but has become a floating charge,

and who acquired the collateral in a transaction which was in the ordinary course of the transferor's business, takes free of the charge unless the transferee knew that the transfer was in breach of the terms of the floating charge.

(3) For the purposes of this regulation—

(a) a charge falling within regulation 20(1)(b) or (c) or regulation 36(1)(e) or (f) (supporting obligation and proceeds) is to be treated as registered;

(b) “transferee” does not include chargee, pledgee or buyer of receivables.

(4) This regulation does not apply to a transfer which is in total or partial satisfaction of a money debt or antecedent liability.

### **Protection of transferees of money, negotiable instruments etc**

**30.** Nothing in these Regulations affects the rights of a transferee of—

(a) money or other form of payment, or

(b) a negotiable instrument or negotiable document of title.

#### *Miscellaneous*

### **Priority: liens**

**31.** Any lien which arises by operation of law takes priority over a charge, whether or not registered.

### **Distress for rent or rates**

**32.**—(1) A landlord's right to distrain on goods for unpaid rent takes priority over any charge, whether or not registered.

(2) A registered charge has priority over a local authority's right to distrain on goods for unpaid rates under Part 3 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989(a) (or any equivalent regulations replacing Part 3).

### **Effect on priority of mistaken discharge of filing**

**33.**—(1) This regulation applies if registration of a charge or a sale of receivables is discharged by mistake or without authorisation.

(2) If the chargee or buyer renews the registration in accordance with the Rules within 30 business days after the discharge, the discharge does not affect the priority ranking of the charge or sale to which the discharged registration relates as against a competing registered charge or sale which, immediately before the discharge, had a subordinate priority ranking.

(3) But paragraph (2) does not apply to the extent that the competing registered charge or sale secures advances made or contracted for after the discharge and before renewal of the registration.

### **Voluntary subordination**

**34.**—(1) These Regulations do not preclude subordination by a person entitled to priority.

(2) But subordination does not, of itself, create a charge.

### **Rights of assignees**

**35.**—(1) In this regulation, “assignee” includes a chargee, buyer of receivables and a receiver.

(2) Unless an account debtor has made an enforceable agreement not to assert defences to claims arising out of a contract, the rights of an assignee of the receivables are subject to—

- (a) the terms of the contract between the account debtor and the assignor and any defence or claim arising from the contract or a closely connected contract, and
- (b) any other defence or claim of the account debtor against the assignor which accrues before the account debtor acquires knowledge of the assignment.

(3) Any payment made by the account debtor to the assignor before receiving notice of the assignment of receivables discharges his obligation to the extent of the payment.

(4) Payment by an account debtor to an assignee in accordance with a notice mentioned in paragraph (3) discharges the obligation of the account debtor to the extent of the payment.

(5) A term in a contract between an account debtor and an assignor which prohibits or restricts assignment of the whole of the receivables for money due or to become due—

- (a) is binding on the assignor, but only to the extent of making the assignor liable in damages for breach of contract, but
- (b) is ineffective against assignees.

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(a) SI 1989/1058; Part III was amended by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2003 (SI 2003/2210).

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**DRAFT REGULATIONS CONTINUE OVERLEAF**

PART 5  
FINANCIAL COLLATERAL

**Effectiveness of charge over investment property or cash in insolvency proceedings**

**36.**—(1) A charge over investment property or cash is not effective against an administrator or liquidator unless, before the commencement of winding-up proceedings—

- (a) it is registered,
- (b) the charge is a security financial collateral arrangement,
- (c) the chargee has control of the collateral,
- (d) the charge is in favour of an intermediary under regulation 37,
- (e) in the case of a supporting obligation, the charge over the obligation it supports is registered or is under the control of the chargee, or
- (f) in the case of any right to the proceeds of collateral arising other than only as a result of the terms of a floating charge, if the charge over the original collateral is registered or under the control of the chargee.

(2) A charge over investment property or cash is subordinate to the interest of a person—

- (a) who causes the collateral to be seized in accordance with due process to enforce a judgment, including execution, attachment or garnishment, or
- (b) who has obtained a charging order or equitable execution which affects or relates to the collateral,

unless the charge falls within paragraph (1)(a) to (f) at the time that person's interest arises.

(3) “Security financial collateral arrangement” and “winding-up proceedings” have the meanings given in the Financial Collateral Arrangements (No. 2) Regulations 2003(a).

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(a) S.I. 2003/3226.

### **Automatic charge in favour of intermediary etc**

**37.**—(1) A fixed charge in favour of an intermediary arises over a person's financial assets held with the intermediary if—

- (a) the person buys the financial assets through the intermediary in a transaction in which the person is obliged to pay the purchase price to the intermediary at the time of the purchase, and
- (b) the intermediary credits the financial assets to the buyer's securities account before the buyer pays the intermediary.

(2) The charge described in paragraph (1) secures the person's obligation to pay for the financial assets.

(3) A floating charge in favour of a person who delivers a certificated financial instrument or other financial asset represented by a document arises over those financial assets if—

- (a) the financial assets are—
  - (i) in the ordinary course of business transferred by delivery with any necessary endorsement or assignment, and
  - (ii) delivered under an agreement between persons in the business of dealing with such financial assets, and
- (b) the agreement calls for delivery against payment.

(4) The charge described in paragraph (3) secures the obligation to make payment for the financial assets.

### **Purchaser takes free: investment property**

**38.**—(1) A purchaser of a certificated financial instrument in bearer form who—

- (a) gives value, and
- (b) obtains possession of the instrument,

without knowing that the purchase constitutes a breach of the terms of a charge which was created or provided for over the instrument, acquires the instrument free of the charge.

(2) A purchaser of a certificated financial instrument in registered form or of an uncertificated financial instrument who—

- (a) gives value, and
- (b) is registered as the holder of the instrument,

without knowing that the purchase constitutes a breach of the terms of a charge which was created or provided for over the instrument, acquires the instrument free of the charge.

(3) If a person who acquires a financial asset held with an intermediary which is transferred to an account held in that person's name—

- (a) gives value, and
- (b) at the time of the transfer does not know that the acquisition constitutes a breach of the terms of the charge,

that person acquires the asset free of the charge.

### **Special priority rules for investment property and cash**

**39.**—(1) Subject to regulation 38 (purchaser takes free: investment property), the following provisions govern priority between conflicting charges or pledges over the same investment property or cash.

(2) A charge or pledge under which the chargee or pledgee has control of the investment property or cash has priority over a charge or pledge under which the chargee or pledgee does not have control.

(3) Conflicting charges under which each chargee has control of the investment property or cash rank according to the order in which control was acquired.

(4) Conflicting charges granted by an intermediary under which the chargee does not have control rank equally.

(5) In all other cases, priority among conflicting charges over investment property or cash is governed by regulation 24 (residual priority rules).

(6) Regulation 24(10) and (11) apply to charges and pledges over investment property and cash with the following modifications—

- (a) the reference to a registered charge or pledge includes one under the control of the chargee or pledgee, and
- (b) the reference to persons mentioned in regulation 20(4) includes persons mentioned in regulation 36(2) (judgment creditors etc).

### **Meaning of “control”**

**40.**—(1) A chargee or pledgee has control of collateral in the cases set out in paragraphs (2) to (9), but only if—

- (a) the charge or pledge, and
- (b) the arrangement under which the chargee or pledgee has control of the collateral,

are evidenced in writing or by the recording (by electronic means) of a conversation.

(2) A chargee or pledgee has control of a certificated financial instrument in bearer form if he obtains possession of the certificate and the debtor has not regained possession.

(3) A chargee has control of a certificated financial instrument in registered form if he—

- (a) has possession of the certificate, or
- (b) is registered with the issuer as the holder.

(4) A chargee has control of an uncertificated financial instrument held in a settlement system if—

- (a) the operator of the system, on the instructions of the registered holder, has credited the financial instrument to a sub-account in the holder’s own name but the holder has given the chargee a power of attorney over the financial instrument,
- (b) the operator of the system is only permitted to effect a transfer of title to the financial instrument on the instructions of the chargee or a person acting on the chargee’s behalf and attributable to the debtor,
- (c) entry in the register maintained by or on behalf of the operator of the system determines legal title and the chargee is entered in that register as the holder, or
- (d) entry in the register maintained by or on behalf of the issuer determines legal title and the chargee is entered in that register as the holder.

(5) A chargee has control of financial assets held with an intermediary—

- (a) if the assets are transferred to an account held by the chargee,

- (b) where the intermediary is bound or compelled under any enactment, instrument or rule of law to receive notice of an interest in financial assets held with it, if the intermediary has been given notice of the assignment by way of mortgage or of a fixed charge, or
  - (c) where the intermediary is not so bound or compelled, if the chargee has obtained the intermediary's agreement that the debtor will no longer be able to deal with the collateral without the agreement of the chargee.
- (6) If an interest in financial assets held with an intermediary is granted by an account holder to the account holder's own intermediary, the intermediary has control.
- (7) If a cash debtor is the chargee of cash it has control of the cash.
- (8) Any other chargee with a fixed charge over cash has control of the cash—
- (a) where the cash debtor is bound or compelled under any enactment, instrument or rule of law to receive notice of an interest in cash held with it, if the chargee notifies the cash debtor of the fixed charge,
  - (b) where the cash debtor is not so bound or compelled, if the chargee has obtained the cash debtor's agreement that the debtor will no longer deal with the collateral, or
  - (c) if, with the agreement of the cash debtor and the debtor, the cash is transferred into the chargee's name.
- (9) In a case not falling within any of paragraphs (2) to (8), a chargee or pledgee has control of collateral consisting of investment property or cash if the debtor is no longer able to deal with the collateral.
- (10) If a charge extends to after-acquired investment property held in a securities account or cash, control over the after-acquired investment property or cash runs from the time control was first obtained over investment property held in that account or the cash subject to the charge.
- (11) Any right of the debtor to substitute equivalent collateral or withdraw excess collateral does not, of itself, prevent investment property or cash being held under the control of the chargee or pledgee.
- (12) A chargee who appoints a receiver under a power granted by the charge agreement does not thereby have control.

## Meaning of other expressions used in Part 5

### 41.—(1) In these Regulations—

“account holder” means a person in whose name an intermediary maintains a securities account;

“cash” means money (in any currency) credited to an account, or a similar claim for repayment of money and includes money market deposits and sums due or payable to, or received between, the parties in connection with the operation of a financial collateral arrangement or close-out netting provision (as defined in regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003<sup>(a)</sup>);

“cash debtor”, in relation to a debtor, means a person who owes cash to the debtor.

“certificated financial instrument” means a financial instrument represented by a certificate;

“deal with”, in relation to collateral, means that the debtor is no longer able to dispose of the collateral free of the chargee's or pledgee's interest or so as to give a purchaser an interest ranking in priority to that of the chargee or pledgee;

“financial asset” means—

- (a) a financial instrument,
- (b) an obligation of a person or a share, participation or other interest in a person or in property or an enterprise of a person—

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(a) S.I. 2003/3226.

- (i) which is, or is of a type, dealt in or traded on financial markets, or
- (ii) which is recognised in any area in which it is issued or dealt in as a medium for investment,

(c) any property which is held by an intermediary for another person in a securities account if the intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under these Regulations, or

(d) a commodity futures contract, a commodity futures option or other similar contract;

“financial instrument” means—

(a) a share in a company or any other financial instrument equivalent to a share in a company,

(b) a bond or other form of financial instrument giving rise to or acknowledging indebtedness which is, or is of a type, dealt in or traded on financial markets, and

(c) any other financial instrument which is normally dealt in and which gives the right to acquire any such share, bond, instrument or other security by subscription, purchase or exchange or which gives rise to a cash settlement (excluding an instrument of payment),

and includes a unit of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000<sup>(a)</sup>, an eligible debt security within the meaning of the Uncertificated Securities Regulations 2001<sup>(b)</sup>, a money market instrument, an uncertificated unit of an interest in a security as defined in the Uncertificated Securities Regulations 2001, and any rights, privileges or benefits attached to or arising from any of the financial instruments included in this definition;

“intermediary” means a person who maintains registers or accounts to which financial assets may be credited or debited for others, or both for others and for his own account, but does not include—

(a) a person who acts as a registrar or transfer agent for the issuer of financial instruments, or

(b) a person who maintains registers or accounts in the capacity of operator of a system for the holding and transfer of financial instruments on records of the issuer or other records which constitute the primary record of entitlement to financial instruments as against the issuer;

“investment property” means a financial instrument, whether certificated or uncertificated and a financial asset held with an intermediary;

“securities account” means an account maintained by an intermediary to which financial assets may be credited or debited;

“settlement system” means a system for the holding and transfer of financial instruments on records of the issuer or other records which constitute the primary record of entitlement to financial instruments as against the issuer;

“uncertificated financial instrument” means a financial instrument not represented by a certificate.

(2) A reference in these Regulations to a financial asset held with an intermediary means the rights of an account holder resulting from a credit of the financial asset to a securities account.

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(a) 2000 c. 8.  
(b) S.I. 2001/3755.

PART 6  
MISCELLANEOUS AND SUPPLEMENTARY

**Interpretation: general**

42. In these Regulations—

“business day” means any day which is not—

- (a) a Saturday or Sunday,
- (b) a bank holiday, or
- (c) Christmas Day or Good Friday;

“company” has the meaning given in [the Companies Act 2006];

“crops” means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, but does not include trees;

“document of title” means a document written on paper issued by or addressed to a bailee—

- (a) which covers goods in the bailee's possession that are identified or are unascertained portions of an identified mass, and
- (b) in which it is stated that the goods identified in it will be delivered to a named person, or to the transferee of that person, or to bearer or to the order of a named person;

“goods” means tangible property including fixtures, crops, trees which have been severed and the unborn offspring of animals, but does not include a document of title, a negotiable instrument, investment property which is represented by a certificate, money or minerals falling within the definition of land under the Land Registration Act 2002(a) or the Land Charges Act 1972(b);

“Lloyd’s deposit” means any funds held on trust pursuant to a Lloyd’s deposit trust deed or a Lloyd’s security and trust deed;

“Lloyd’s relevant trust fund” means any funds held on trust under a trust deed entered into by the member in accordance with the requirements of the Authority and Byelaws of the Society for the payment of an obligation arising in connection with insurance market activity carried on by a member, or for the establishment of a Lloyd’s deposit, and includes funds held on further trusts declared by the Society or the trustee of such a trust deed in respect of any class of insurance market activity;

“money” means notes and coins which are legal tender in any currency;

“negotiable instrument” means—

- (a) a cheque, bill of exchange or promissory note within the meaning of the Bills of Exchange Act 1882(c), or
- (b) any other document written on paper which evidences a right to payment of money and is of a type which, in the ordinary course of business, is transferred by delivery with any necessary endorsement or assignment,

but does not include a document of title or investment property;

“pledge” includes a contractual lien;

“purchase” means take by sale, lease, discount, assignment, negotiation, charge, pledge, issue, reissue, gift or any other consensual transaction that creates an interest in property; and

“purchaser” has a corresponding meaning;

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(a) 2002 c. 9.  
(b) 1972 c. 61.  
(c) 1882 c. 61.

“supporting obligation” means a right to the sums due under of a letter of credit or a guarantee or indemnity which supports the payment or performance of the principal obligation under receivables, a document of title, a negotiable instrument or investment property;

“value” means any consideration which is sufficient to support a simple contract, and includes an antecedent debt or other obligation.

### **Index of defined terms**

**43.** This table shows the provisions defining or otherwise explaining expressions used in these Regulations.

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### Account debtors and cash debtors

**44.**—(1) A person who owes receivables (an “account debtor”) may take a charge over the receivables.

(2) A cash debtor may take a charge over the cash it owes.

### Consequential amendments

**45.**—(1) [*Apply these Regulations to LLPs as they apply to companies by adding a reference to them in the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090) [and the Limited Liability Partnerships (Scotland) Regulations 2001 (S.I. 2001/128.)]*]

(2) Section 245 of the Insolvency Act 1986(a) (avoidance of certain floating charges created before onset of insolvency) shall be amended as follows.

(3) In subsection (2), for the word “created” substitute “created or registered”.

(4) In the opening words of subsection (3), for the word “created” substitute (in both places) “created or registered”.

(5) In the opening words of subsection (4), for the word “creates” substitute “creates or registers”.

(6) At the end of that section add—

“(7) In this section, “registered” means registered under the Company Security Regulations 2006”; and “registers” shall be construed accordingly.”

(7) [*A number of other consequential amendments (other than cross-references and minor amendments) are identified in the Explanatory Note.]*

### Transitional provisions and savings

**46.**—(1) In this regulation—

“commencement” means the date when these Regulations come into force,

“pre-commencement registered charge” means a charge which was registered under Part 12 of the Companies Act 1985(b) (certain charges void if not registered);

“pre-commencement sale of receivables” means a sale of receivables made before commencement which, had it been made after commencement, could have been registered under these Regulations;

“pre-commencement unregistrable charge” means a charge created before commencement which was not registrable under Part 12 of the Companies Act 1985 but which, had it been created after commencement, could have been registered under these Regulations;

“transitional period” means the period beginning with the date of commencement and ending two years later.

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(a) 1986 c. 45.

(b) 1985 c. 6.

(2) Rules may make special transitional provision for cases where the process of registration under Part 12 of the Companies Act 1985 was begun but not completed before commencement.

(3) On commencement, a pre-commencement registered charge—

- (a) is to be treated as a registered charge,
- (b) retains its priority as against other pre-commencement registered charges, pre-commencement unregistrable charges, pledges and interests arising under pre-commencement sales of receivables, and
- (c) is subject to the priority rules in these Regulations as against other charges, pledges and interests arising under sales of receivables.

(4) On commencement, a pre-commencement unregistrable charge—

- (a) retains its priority as against other pre-commencement registered charges, pre-commencement unregistrable charges, pledges and interests arising under pre-commencement sales of receivables,
- (b) has priority as if it had been registered at commencement, and
- (c) is subject to the priority rules in these Regulations as against other charges, pledges and interests arising under sales of receivables.

(5) Except for paragraphs (2) to (7), these Regulations do not apply to a pre-commencement sale of receivables until after the end of the transitional period.

(6) During the transitional period, the interest arising under a pre-commencement sale of receivables has priority over any conflicting charge created, or interest arising under a sale of receivables made, after commencement, whether or not registered.

(7) If a pre-commencement sale of receivables is registered before the end of the transitional period, the commencement date is treated as the date of registration.

Date

Secretary of State