

A New Regime for the Registration of Charges Created by UK Companies Will Come into Force on 6 April 2013

Introduction

A new regime for the registration of company charges will come into force on 6 April 2013 on the implementation of The Companies Act 2006 (Amendment of Part 25) Regulations 2013 (SI 2013/600), which amend the existing Companies Act 2006 provisions. The main objectives of the new regime are:

- to introduce a single scheme for the registration of charges that applies to any company registered anywhere in the UK¹, irrespective of the location of the asset charged or the law used to create the security
- to provide for electronic filing of charges at Companies House, with the aim of reducing costs, in tandem with the existing regime for hard copy filing.

Which Charges are Registrable Under the New Regime?

The general principle is that Companies House must register all charges created by a UK company, including those created outside the UK, provided that it is notified of the charge in accordance with the statutory requirements. Certain charges are, however, specifically excluded from registration. These include rent deposit deeds as well as charges excluded from registration requirements by certain other legislation. The new system will alleviate the current uncertainty as to which charges should be registered.

Who May Notify Companies House of the Creation of a Charge?

In contrast to the current statutory obligation to register a charge which applies to the company granting it, the company that created the charge may notify it but need not do so. In line with current practice, because of the severe consequences of non-notification, it is likely that prudent chargeholders (or their legal advisers) will make a notification.

What is the Time Limit for Making the Notification?

Prescribed details of the charge must be **delivered** to Companies House within a period of 21 days, beginning with the day after the date of the creation of the charge. This replaces the current 21-day period for **registration** of the charge. There are no special rules for charges created outside the UK or for charges over non-UK property; the same time limit will apply. There are, however, provisions to allow for a court application to be made to deliver a charge out of time in certain circumstances. In these cases, the priority of the charge will generally be determined from the date of its late registration and the charge will rank behind any security registered before that date.

What are the Consequences of Failing to Notify a Charge?

Criminal sanctions will no longer apply. However, the charge will, as at present, be void against a liquidator, administrator and creditor of the company, and the monies secured by the charge will immediately become payable. All registrable charges created on or after 6 April 2013 should, accordingly, be notified to Companies House in line with the new rules as a matter of course.

Where a company acquires property subject to a charge on or after that date, the company or the person interested in the charge may elect to notify Companies House of the charge but there are no sanctions (of invalidity or otherwise) for not doing so.

In the following two cases, details regarding a charge may, likewise, be notified to Companies House on an elective basis without sanction for failure to do so:

- where a company holds charged property as trustee, the company or person interested in the charge may file a statement to this effect with Companies House
- where there has been an amendment to a previously registered charge by the addition of a negative pledge or a variation in the ranking of the charge, the company or person interested in the charge may notify Companies House accordingly.

What Changes Will be Made to Companies House Practices?

As well as allowing for electronic filing, Companies House will be introducing new forms and procedures to facilitate the registration of charges and will be making charging documents available for public inspection. Provisions are in place for the protection of personal information contained in such documents.

¹ The "UK" means the United Kingdom of Great Britain and Northern Ireland. Great Britain comprises England, Scotland and Wales.

What About Evidence that the Charge Documents Have Been Properly Filed?

The certificate of registration issued by the Registrar of Companies will be conclusive evidence that the relevant charge documents were delivered to Companies House within the prescribed period, although it will no longer be conclusive evidence of the statement of particulars filed.

Will it Still be Necessary to Keep a Register of Charges?

No. As part of the new regime, UK companies will no longer be required to keep a register of charges. They will, however, be required to keep copies of the following available for inspection:

- charge instruments²
- any instrument amending a charge
- if any details relating to a charge which must be submitted to Companies House are not contained in the charge instrument itself, the other documents referred to in or otherwise incorporated into the charge.

The copy documents must be kept at the company's registered office (or its single alternative inspection location). The company must notify Companies House where the documents are kept and of any change, unless they have at all times been kept at the company's registered office.

The documents must be open to inspection:

- by any creditor or member of the company, without payment
- by any other person, on payment of a fee as prescribed.

What about Transitional Arrangements?

The new regime will apply to charges created on or after 6 April 2013. The existing regime will continue to apply to charges created up to and including 5 April 2013, except for the new rules relating to:

- registration of enforcement of security
- entries of satisfaction and release
- notification of addition to or amendment of a charge.

These will apply to all such notifications or registrations made on or after 6 April 2013, irrespective of the date of the creation of the relevant charge.

¹ The requirement extends to any instrument creating a charge which is capable of registration under the new regime.

What About LLPs?

Separate regulations, The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 (SI 2013/618), extend the new regime to limited liability partnerships (LLPs) in line with the new rules for companies.

How Squire Sanders Can Help

We would be pleased to answer any questions you may have in relation to this article or to discuss any aspect of the new regime in more detail.

Contact

Andrew Pike

Partner, Corporate/Corporate Finance
T +44 113 284 7562
F +44 870 460 3106
E andrew.pike@squiresanders.com

Wendy Wilkes

Head of Company Secretarial Unit
T +44 121 222 3745
F +44 870 460 2794
E wendy.wilkes@squiresanders.com

Lynette Bridgens

Legal Assistant
Company Secretarial Unit
T +44 121 222 3667
F +44 870 460 2797
E lynette.bridgens@squiresanders.com