

Briefing Note:

Registering Security at UK Companies House

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EXECUTIVE SUMMARY

- This briefing note provides an overview of the proposal to publicly register sovereign loans under English law.
- It is proposed that bilateral sovereign loans governed by English law be publicly registered by lenders.
- Failure to register a loan will render it unenforceable.
- Public registration of loans in exchange for enforceability is not new. For example, lenders have always been required to register security for loans, or risk the security being void/unenforceable.

The Basic Idea

When a lender such as a bank lends money to a borrower company, the bank may wish to mitigate the risk of non-repayment by taking security (broadly speaking, a charge) over the company's assets. In the event of borrower default, the bank may then seize these assets and sell them to realise their monetary value in (part-)settlement of the debt. When a lender takes charges over substantially all the current and future assets of a company, this has a special name: the security is called a debenture.^[1]

It is quite common that third parties are unaware that assets are subject to security because charges are manifested in private legal agreements. A third party could grant a company trade credit, believing, incorrectly, that the company is asset rich, only to discover on that company's insolvency that its assets effectively belong to a secured lender. For this reason the law provides that the secured lender take an additional step – called perfection – which amounts to some duty to make the security publicly known.

In the UK, company charges may be publicly registered by delivering certain specified information to Companies House (see below).^[2] Additionally, the company that provides the security should keep copies of the instruments creating the charge available for inspection at its registered office.

The consequences of failure to register

Before 6 April 2013, it was a criminal offence for an interested person not to register a company charge at Companies House. Following changes to the law, there are no criminal sanctions and to this extent registration of a charge may be said to be 'optional'. However, this optionality has a sting in its tail .

If a debenture is not registered within the required time, the first consequence is that it is rendered void and unenforceable against:

- a liquidator of the company;
- an administrator of the company;
- a creditor of the company.

[1] Also known as a 'fixed and floating charge', or even 'universal charge'. [2] See ss.859A-859Q Companies Act 2006.

The practical effect of this is to defeat the purpose of the debenture: the lender is still owed money by the company but is now unsecured and must suffer the same level of losses as every other unsecured creditor. The second consequence of failure to register is that the loan secured by the debenture becomes immediately due and payable – usually a devastating event for the company owing the money, and likely leading to insolvency and losses for the lender too.

Given these consequences, lawyers regard registration as *de facto* mandatory.

Timing and mechanics of registration

The following information should be delivered to Companies House:

- A certified copy of the instrument creating the registrable charge;
- A statement of particulars, including:
 - names of at least four persons entitled to the security;
 - the legal kind of security created;
 - whether the instrument also prohibits the company from providing further security to other creditors (a ‘negative pledge’).

Note: it is not necessary to disclose the debt amount secured by the debenture, and well-drafted instruments will only refer to abstract ‘secured liabilities’ owing under a separate loan agreement.

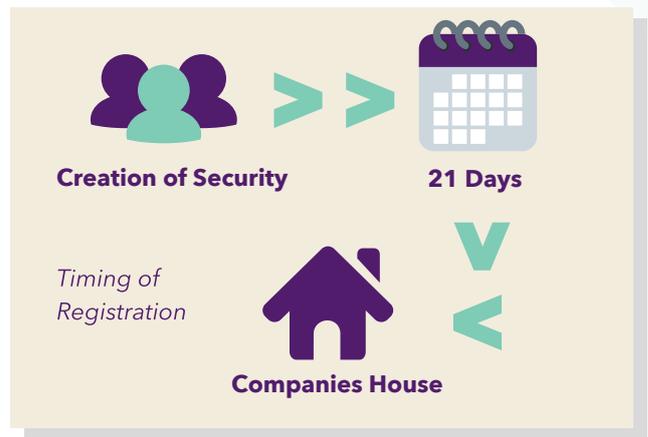
The above should be delivered to the Registrar of Companies within **21 days beginning with the day after the date of the creation of the charge** unless an order allowing an extended period is made. The date of creation is usually what is confusingly called the ‘date of delivery’ of the deed (a special instrument) creating the charge. Essentially a deed will state that it is delivered when it is duly executed (signed) by all parties on a date specified, the being inserted on execution.



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Comment

In the case of the proposed register of private lender to state loans, registration will affect the loan itself, not any security. In this case it is proposed that the unregistered loan be void at English law, just as if it had been made in excess of a corporation’s powers under the common law applicable to corporation’s contracts. Nevertheless, the current regime for UK company charges has long been accepted by the City of London and provides a practical model for a register of lender to state loans.



[Technical note: this briefing does not constitute legal advice. Anyone affected by matters of the type discussed in this note should seek independent legal advice. This note provides a high-level discussion of the key features of registration of charges granted by UK companies, and as such not accounted for several key technical nuances and exceptions which may be relevant in specific cases.]



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