



Moveable Transactions (Scotland) Act 2023 2023 asp 3

PART 2

SECURITY OVER MOVEABLE PROPERTY

CHAPTER 1

PLEDGE

Statutory pledge

45 Constitutive document

- (1) A statutory pledge requires a constitutive document.
- (2) The constitutive document must—
 - (a) be executed or authenticated by the provider,
 - (b) identify the property which is to be the encumbered property, and
 - (c) identify the obligation which is to be the secured obligation.
- (3) If the encumbered property is to consist of more than one item, the constitutive document must—
 - (a) identify each item separately, or
 - (b) identify the items in terms of their constituting an identifiable class.
- (4) The property identified (whether separately or as a class) as the property which is to be the encumbered property may be either property of, or property to be acquired by, the provider.
- (5) For the purposes of subsections (2) and (3), the ways in which the encumbered property or the secured obligation can be identified in the constitutive document include by making reference in the constitutive document to another document, the terms of which are not reproduced.

46 Competence of individual acting as provider of a statutory pledge

- (1) It is not competent for an individual to be the provider of a statutory pledge unless—
- (a) the individual is acting in the course of—
 - (i) the individual’s business,
 - (ii) the activities of a charity of which the individual is a trustee, or
 - (iii) the activities of an unincorporated association (other than a charity) of which the individual is a member, and
 - (b) the encumbered property is a permitted asset, or consists only of permitted assets.
- (2) For the purpose of subsection (1)(b), an asset is a “permitted asset” if—
- (a) it is (as the case may be)—
 - (i) used, or to be used, wholly or mainly for the purposes of the individual’s business,
 - (ii) an asset of the charity, or
 - (iii) owned by the individual on behalf of, or jointly with the other members of, the association, and
 - (b) in the case of corporeal property, it has a monetary value exceeding £3,000 immediately before the document under which it will become encumbered property is granted.
- (3) The Scottish Ministers may by regulations—
- (a) modify subsection (2)(b) so as to modify the amount for the time being specified there,
 - (b) modify this section so as to specify types of property which are or are not permitted assets.
- (4) For the purposes of this section—
- (a) “charity” means—
 - (i) a charity within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005, or
 - (ii) an organisation managed or controlled wholly or mainly outwith Scotland and which is registered in a register equivalent to the Scottish Charity Register (kept under section 3 of that Act) for the purposes of the country in which it operates,
 - (b) a trustee of a charity is one of the persons having the general control and management of the administration of the charity.

47 Competence of creating statutory pledge over certain kinds of property

- (1) It is not competent to create a statutory pledge over corporeal property which is—
- (a) an aircraft in respect of which it is competent to register a mortgage in the register of aircraft mortgages kept by the Civil Aviation Authority,
 - (b) an aircraft object (as defined in regulation 5 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 ([S.I. 2015/912](#))), or
 - (c) a ship (or a share in a ship) in respect of which it is competent to register a mortgage in the register of British ships maintained for the United Kingdom under section 8 of the Merchant Shipping Act 1995.

- (2) It is not competent to create a statutory pledge over incorporeal property unless that property is—
 - (a) intellectual property, or
 - (b) an application for, or licence over, intellectual property.
- (3) The Scottish Ministers may by regulations modify [this section](#) so as to specify further kinds of incorporeal property over which it is competent to create a statutory pledge.

48 Creation of statutory pledge by registration: general

- (1) A statutory pledge is created over property which is identified in a constitutive document in accordance with [section 45](#) on the requirements mentioned in [subsection \(2\)](#) all being met.
- (2) Those requirements are that—
 - (a) the property is the provider’s,
 - (b) the statutory pledge is registered, and
 - (c) the property is identifiable as property to which the constitutive document relates.
- (3) [Subsection \(2\)\(b\)](#) is subject to [section 91](#) (effective registration of statutory pledge) and, accordingly, the requirement of that subsection—
 - (a) is not met if the registration of the constitutive document is ineffective in accordance with [section 91\(1\)](#), and
 - (b) is met if and when that registration becomes effective in accordance with [section 91\(3\)](#).
- (4) [This section](#) is subject to [section 50](#) (creation of statutory pledge: insolvency).

49 Creation of statutory pledge over added property

- (1) Where a statutory pledge is amended so as to add property to the encumbered property by means of an amendment document under [section 58](#), a statutory pledge is created over the added property on the requirements mentioned in [subsection \(2\)](#) all being met.
- (2) Those requirements are that—
 - (a) the added property is the provider’s,
 - (b) the amendment is registered, and
 - (c) the added property is identifiable as property to which the amendment document relates.
- (3) [Subsection \(2\)\(b\)](#) is subject to [section 92](#) (effective registration of amendment to statutory pledge) and, accordingly, the requirement of that subsection—
 - (a) is not met if the registration of the amendment document is ineffective in accordance with [section 92\(1\)](#), and
 - (b) is met if and when that registration becomes effective in accordance with [section 92\(3\)](#).
- (4) [This section](#) is subject to [section 50](#) (creation of statutory pledge: insolvency).

50 Creation of statutory pledge: insolvency

- (1) [This section](#) applies where—
 - (a) the property identified (whether separately or as a class) as the property which is to be the encumbered property under a statutory pledge is or includes property to be acquired by the provider, and
 - (b) after the pledge is granted, the provider becomes insolvent.
- (2) The statutory pledge is not created over any property which, though identified by the constitutive document or by an amendment document as property to be encumbered, is acquired by the provider after becoming insolvent.
- (3) For the purposes of [subsection \(2\)](#)—
 - (a) a provider who is an individual, or the estate of which may be sequestrated by virtue of section 6 of the Bankruptcy (Scotland) Act 2016, becomes insolvent when—
 - (i) the provider’s estate is sequestrated,
 - (ii) the provider grants a trust deed for creditors or makes a composition or arrangement with creditors,
 - (iii) the provider is adjudged bankrupt,
 - (iv) a voluntary arrangement proposed by the provider is approved,
 - (v) the provider’s application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or
 - (vi) the provider becomes subject to any other order or arrangement analogous to any of those mentioned in sub-paragraphs (i) to (v) anywhere in the world, and
 - (b) a provider other than is mentioned in [paragraph \(a\)](#) becomes insolvent when—
 - (i) a decision approving a voluntary arrangement entered into by the provider has effect under section 4A of the Insolvency Act 1986 (“the 1986 Act”),
 - (ii) the provider is wound up under Part 4 or 5 of the 1986 Act or under section 367 of the Financial Services and Markets Act 2000,
 - (iii) an administrative receiver, as defined in section 251 of the 1986 Act, is appointed over all or part (being a part to which the constitutive document or any amendment document relates) of the property of the provider,
 - (iv) the provider enters administration (“enters administration” being construed in accordance with paragraph 1(2) of schedule B1 of the 1986 Act),
 - (v) an order under section 901F of the Companies Act 2006 sanctioning a compromise or arrangement entered into by the provider comes into effect over all or part of the property of the provider, or
 - (vi) the provider becomes subject to any other order, appointment or arrangement analogous to any of those mentioned in sub-paragraphs (i) to (v) anywhere in the world.
- (4) The Scottish Ministers may by regulations modify [subsection \(3\)](#).