



**Company Charges and Financial Assistance:
The Significance of Planned Reforms in Law and Practice**

**Evening Seminar 5.45 – 8.45pm
Wednesday 9 November 2011**

**Royal Irish Academy
19 Dawson Street, Dublin 2**
www.iclf.ie

2.5 CPD points are available for this event

This seminar addresses the implications of Part 7 of the draft Companies Bill published by the Department of Jobs, Enterprise and Innovation on 30 May 2011 deals with charges and debentures. The Company Law Review Group's stated aim in relation to Part 7 was to simplify the registration of charges and to effect improvements to the rules on priority. Of particular note are changes to the registrability and the operation of priority as well as changes to information required on the forms required to be filed in the Companies Registration Office.

The seminar also addresses the issue of financial assistance for acquisition of shares pursuant to section 60 of the Companies Act 1963 (as amended) including the planned introduction of a requirement that financial assistance be given for the principal purpose of the acquisition of the shares.

To book complete the registration form available on www.iclf.ie/irish-corporate-law-forum-events.php and send with the appropriate payment. Enquiries: events@iclf.ie

5.15 – 5.45pm REGISTRATION

5.50pm *Introductory Remarks*

Dr Deirdre Ahern,

Director, Irish Corporate Law Forum

Barbara Cotter, A&L Goodbody,

Seminar Chair

6.00pm *The Definition of a Charge and the Principle of Presumed Registrability*

William Johnston, Arthur Cox and Member of the Company Law Review Group

Beginning with the background to the proposals in terms of the approach of the Company Law Review Group, this paper will go on to specifically consider some important threshold issues in relation to registration of charges. The proposed amendment of the definition of a "charge" in

section 99(10)(a) of the Companies Act 1963 will be examined and the implications of the replacement of categories of registrable charge in section 99(2) of the Companies Act 1963 with the principle of presumed registrability for all company charges including the requirement to register transfers of charges and charges over new classes of asset which may arise. Exceptions which arise pursuant to the terms of the Financial Collateral Directive 2002/47/EC for security financial collateral arrangements and charges created or otherwise arising under such an arrangement are also considered.

6.30pm *Streamlining the Particulars to be Registered*

Helen Dixon, Registrar, Companies Registration Office and Member of the Company Law Review Group

This paper will consider the practical implications of planned reforms from the perspective of the Companies Registration Office. Matters covered will include issues such as revised particulars to be filed in the Companies Registration Office including removal of the need to specify the amount secured and changes to requirements concerning brief particulars of the property to be charged and signing requirements and the discontinuance of the Slavenburg register for companies not registered on the external register.

6.50pm Coffee break

7.10pm *From First in Time to First to File: New Rules for the Efficient Determination of Priority*

Dr Noel McGrath, School of Law and Government, Dublin City University

This paper considers the move to first in time priority and the implications of moving from a transaction-filing model to a safeguarding notice-filing model based on Article 9 of the Uniform Commercial Code whereby priority is determined by either the date of preliminary filing of intention to create a charge or otherwise the filing date rather than the date of creation of the charge. Challenges in relation to recognition of overriding priority interests and the problematic issue of notice for automatic crystallisation clauses and negative pledge clauses will also be considered.

7.40pm *The Parameters of Financial Assistance Explored*

Kelley Smith BL

This paper examines the scope of the prohibition on financial assistance having regard to reforms to section 60 of the Companies Act 1963 effected by section 56 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and under the draft Companies Bill, including the implications of the significant new threshold requirement that the financial assistance be given for the principal purpose of the acquisition of the shares as inspired by section 678 of the UK Companies Act 2006.

8.10pm Q&A / Panel Discussion

8.30pm Closing Remarks

About the ICLF

The Irish Corporate Law Forum promotes the discussion of legal issues relating to the practice and study of corporate law and corporate governance in Ireland. Dr Deirdre Ahern of the School of Law, Trinity College Dublin is the Director of the ICLF. For further details and to become a member see www.iclf.ie.

Chair

Barbara Cotter

Barbara Cotter is a partner in the Banking and Financial Services Department at A&L Goodbody. She advises banks, financial institutions, pension funds, investors and property clients on general banking matters and asset financing including shipping finance, project finance and tax based financing. A member of the Law Society's Education Committee, Barbara has published articles and spoken at many conferences on aspects of her work.

Speakers

Helen Dixon

Helen Dixon is Registrar at the Companies Registration Office since 2009 and is a member of the Company Law Review Group. Educated at UCD and Queen's University Belfast, she was previously a principal officer in the Department of Enterprise, Trade and Innovation.

William Johnston

William Johnston is a partner in the Finance Department of Arthur Cox. He is the author of several banking and finance publications and has been a member of the Company Law Review Group since 2000 where he has chaired sub-committees on corporate capacity and authority, creditor protection and charging orders over shares. He was a member of the 1994 Company Law Review Group; he is an economics graduate of Trinity College Dublin and is a board member of UCD Commercial Law Centre.

Dr Noel McGrath

Dr Noel McGrath is a lecturer in the School of Law and Government, DCU. His doctoral work focused on the perfection of secured transactions over real and personal property in Ireland and the United States. Noel's recent research has included consideration of perfection mechanisms under the Financial Collateral Directive and a legal analysis of the issues presented by the establishment of the National Asset Management Agency. He is co-author of *The National Asset Management Agency Act 2000: An Annotation* (Round Hall, 2009).

Kelley Smith BL

Kelley Smith BL is a practising barrister specialising in commercial law including banking and finance law, tax and corporate insolvency. She is an associate of the Irish Taxation Institute and formerly worked in a Big Four accountancy firm.