

Moveable Transactions (Scotland) Bill — Stage 2

Section 3

Tom Arthur

- 1 In section 3, page 2, line 38, after <claim,> insert—
 - <() the claim becoming identifiable as a claim to which the assignation document relates,>

Section 5

Tom Arthur

- 2 In section 5, page 4, line 22, leave out from second <is> to <not> in line 27 and insert <may be assigned in part only if the claim is divisible and either—
 - () the debtor consents, or
 - () the assignation is not likely to>

Tom Arthur

- 3 In section 5, page 4, line 29, leave out <and the assignor agree otherwise> and insert <agrees otherwise with the assignor, or agreed otherwise with a person who was previously the holder of the claim (when that person was the holder)>

After section 12

Tom Arthur

- 4 After section 12, insert—

<Performance in good faith where claim assigned subject to condition

 - (1) Subsection (2) applies where—
 - (a) a claim in respect of which an assignation document is granted is subject to a condition which must be satisfied before the claim is transferred,
 - (b) the claim has not yet been transferred by virtue only of the condition not yet being satisfied, and
 - (c) the debtor, or any co-debtor, performs in good faith to the assignee.
 - (2) The debtor, or (where there are two or more co-debtors) each of the co-debtors, is discharged from the claim to the extent of the performance.
 - (3) Section 10(3) applies for the purposes of subsection (2) as it applies for the purposes of section 10(2).>

Section 13

Tom Arthur

- 5 In section 13, page 9, leave out lines 18 to 23

Tom Arthur

- 6 In section 13, page 9, line 26, leave out subsection (5)

Tom Arthur

- 7 In section 13, page 9, line 28, at end insert—

<() For the purposes of any enactment or rule of law concerning compensation, set-off, retention, balancing of accounts or counterclaims, a debtor is not to be treated as receiving notice of the assignation of a claim only because an assignation document is registered in respect of the claim.>

Section 14

Tom Arthur

- 8 In section 14, page 10, line 23, at end insert—

<() Where a debtor who makes a request under subsection (1) or (5) is a co-debtor, the reference in subsection (4) or (as the case may be) (7) to the debtor is to the debtor who made the request and does not include a reference to any co-debtor of that debtor.>

After section 22

Tom Arthur

- 9 After section 22, insert—

<Application for registration where claims assigned to different assignees

- (1) Where an assignation document assigns different claims to different assignees, each assignee may apply to the Keeper for registration of the document only in so far as it assigns a claim to that assignee (“the applicant”).
- (2) A reference in this Part, in relation to an assignation document in respect of which such an application has been accepted by the Keeper, to—
 - (a) the registration of the document is a reference to the registration of the document in so far as it assigns a claim to the applicant,
 - (b) the assignee under the document is a reference to the applicant,
 - (c) a claim assigned by the document is a reference to a claim assigned by the document to the applicant.>

Section 34

Tom Arthur

- 10 In section 34, page 20, line 3, after <days> insert <or such other period (which may be longer or shorter than 14 days) as the court considers appropriate>

Section 35

Tom Arthur

- 11 In section 35, page 20, line 15, at end insert—
- <() a search result which—
- (i) relates to a search of the assignments record carried out by means of a search facility provided by the Keeper,
 - (ii) ought (as a result of the search terms used) to reflect accurately the contents of the assignments record at the time the search was made, and
 - (iii) does not accurately reflect those contents,>

Section 38

Tom Arthur

- 12 Leave out section 38 and insert—
- <Repeal of Transmission of Moveable Property (Scotland) Act 1862**
The Transmission of Moveable Property (Scotland) Act 1862 is repealed.>

Section 42

Tom Arthur

- 13 In section 42, page 24, line 36, leave out <an independent third party> and insert <another person>

Section 43

Tom Arthur

- 14 In section 43, page 25, line 21, leave out from beginning to <if> in line 22 and insert—
- <() If>

Tom Arthur

- 15 In section 43, page 25, line 25, leave out from <and> to first <the> in line 26 and insert—
- <() The>

After section 43

Tom Arthur

16 After section 43, insert—

<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.>

Section 48

Tom Arthur

- 17 Leave out section 48

Section 56

Tom Arthur

- 18 In section 56, page 32, line 5, leave out from beginning to <if> in line 6 and insert—
<() If>

Tom Arthur

- 19 In section 56, page 32, line 9, leave out from <and> to first <the> in line 10 and insert—
<() The>

Section 64

Tom Arthur

- 20 In section 64, page 35, line 13, leave out from <unless> to end of line 15 and insert <if>

Section 66

Tom Arthur

- 21 In section 66, page 37, line 9, after <price> insert <no lower than one>

Section 71

Tom Arthur

- 22 In section 71, page 38, leave out lines 32 to 34

Section 91

Tom Arthur

- 23 In section 91, page 48, line 5, leave out subsection (1) and insert—
<(1) Subsection (2) applies where at, some time after a statutory pledge is registered effectively—
(a) a person acquires, for value, in good faith and exercising reasonable care—
(i) property which is encumbered under the pledge, or
(ii) a right in such property, and
(b) at the time the person acquires that property or right (“the acquired property”), any one of condition A, condition B or condition C is met.

(1A) Condition A is that the entry for the pledge in the statutory pledges record has been incorrectly removed from the statutory pledges record (whether or not on transfer of that entry to the archive record) and remains incorrectly absent from the record.

(1B) Condition B is that—

- (a) the acquired property does not have an identifying number which, by virtue of RSP Rules, must be used in identifying it, and
- (b) the entry for the pledge in the statutory pledges record is seriously misleading in respect of the acquired property.

(1C) Condition C is that—

- (a) the acquired property has an identifying number which, by virtue of RSP Rules, must be used in identifying it, and
- (b) if a search of the statutory pledges record were to be carried out for that number using the search facility provided under section 102, it would not disclose the entry.>

Tom Arthur

24 In section 91, page 48, line 22, leave out from <property> to end of line 23 and insert <acquired property.>

Tom Arthur

25 In section 91, page 48, line 24, leave out <(1)(c)> and insert (1)(a)>

Section 92

Tom Arthur

26 In section 92, page 48, line 28, leave out <91(1)(b)(i)> and insert <91(1B)>

Tom Arthur

27 In section 92, page 49, leave out line 36 and insert—

<() does not describe the property as being of a type that it is, or>

Tom Arthur

28 In section 92, page 50, line 5, leave out <91(1)(b)(i)> and insert <91(1B)>

Section 97

Tom Arthur

29 In section 97, page 52, line 32, at end insert—

<() Where the registered creditor is not the secured creditor in relation to the statutory pledge in the entry—

- (a) the registered creditor must, in so far as it is reasonable and practicable to do so, promptly notify the secured creditor of the notice received under subsection (3)(a), and

(b) subsection (4) applies to the secured creditor as it applies to the registered creditor.>

Section 102

Tom Arthur

30 In section 102, page 55, line 18, leave out <or permit>

Section 105

Tom Arthur

31 In section 105, page 56, line 24, leave out <(either or both)—>

Tom Arthur

32 In section 105, page 56, leave out line 28

Tom Arthur

33 In section 105, page 57, leave out from beginning of line 14 to <pledge,> on line 15

Tom Arthur

34 In section 105, page 57, line 32, after <days> insert <or such other period (which may be longer or shorter than 14 days) as the court considers appropriate>

Section 107

Tom Arthur

35 In section 107, page 58, line 19, at end insert—

<() a search result which—

- (i) relates to a search of the statutory pledges record carried out by means of a search facility provided by the Keeper,
- (ii) ought (as a result of the search terms used) to reflect accurately the contents of the statutory pledges record at the time the search was made, and
- (iii) does not accurately reflect those contents,>

After section 112

Tom Arthur

36 After section 112, insert—

<Registration of electronic documents

Competence of registration of electronic documents

Section 9G(1)(d) of the Requirements of Writing (Scotland) Act 1995 (registration and recording of electronic documents) does not apply in relation to the registration of a document by the Keeper under this Act.>

Section 114

Tom Arthur

- 37 In section 114, page 62, line 27, after <34(8),> insert <(Competence of individual acting as provider of a statutory pledge)(3),>

Tom Arthur

- 38 In section 114, page 62, line 27, leave out <48(5),>

Tom Arthur

- 39 In section 114, page 62, line 27, after <52(3),> insert <53(8),>

Tom Arthur

- 40 In section 114, page 62, line 28, leave out <116(3)> and insert <116(1B)>

Tom Arthur

- 41 In section 114, page 62, line 29, leave out <53(8),>

Section 116

Tom Arthur

- 42 In section 116, page 63, leave out lines 6 and 7

Tom Arthur

- 43 In section 116, page 63, line 10, at end insert—
<“electronic signature” has the meaning given by section 12(1) of the Requirements of Writing (Scotland) Act 1995,>

Tom Arthur

- 44 In section 116, page 63, leave out lines 11 and 12

Tom Arthur

- 45 In section 116, page 63, line 18, at end insert—
<(1A) In this Act, a reference (however expressed) to—
(a) the authentication of a document by a person is a reference to the electronic signature of that person—
(i) being incorporated into, or logically associated with, the electronic document, and
(ii) having been created by that person,
(b) the execution of a document is a reference to the document’s being subscribed as a traditional document in compliance with section 2(1) of the Requirements of Writing (Scotland) Act 1995.>

(1B) The Scottish Ministers may by regulations modify (either or both) paragraph (a) or paragraph (b) of subsection (1A).>

Tom Arthur

46 In section 116, page 63, line 23, leave out subsection (3)