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The “Slavenburg” register comes to an end
by Ellen Sofie Løkholm

From 1 October 2009, the “Slavenburg” register in England for company charges created by overseas companies is no longer relevant, and the law governing such charges is now contained in the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 (the “Regulations”), issued pursuant to the Companies Act 2006.

Until the Regulations came into effect, and since the case *NV Slavenburg's Bank v Intercontinental Natural Resources Ltd and others [1980] 1 All ER 955*, companies registered overseas with an established place of business in England and Wales had to register relevant charges created on their property in England, even though it had previously been the practice of the Registrar of Companies not to require such registration unless the overseas company was registered in England under the 1985 Companies Act.

The “Slavenburg” register was created after this court case, providing a system whereby particulars of the charges created, together with the instrument by which they were created, had to be delivered to the Registrar of Companies within 21 days. This resulted in a vast number of registrations in shipping related financing transactions, as well as in other cross-border markets. The overseas ship-owner obtaining finance in the London market often had to complete the registrations on charges created in favour of the banks as part of the loan security documentation, even though the relevant offshore registered companies creating the charges over their property were not registered in England and Wales and had no place of business here. This was a result of some uncertainty regarding the scope of the “Slavenburg” registration requirements and a conservative approach adopted by most lenders’ solicitors.

In addition to the burden of registration this placed on companies creating charges which were in fact ineligible for registration, the system was not found to be particularly useful for creditors either, since the information was not easily accessible and verifiable, and could not be searched against given that these overseas companies were not registered with company numbers.

Under the Regulations, the registration obligation is limited to companies which have registered a UK establishment pursuant to the Overseas Companies Regulations 2009 and have not submitted a notice of closure of such a UK establishment (a “Registered Overseas Company”). This will therefore exempt a large number of overseas companies which enter into security documents creating charges over their eligible assets without having a registered UK establishment, who were previously filing “Slavenburg” registrations.

Furthermore, a charge will only require registration under the Regulations if the property subject to the charge is situated in the United Kingdom and the charge is of a

type requiring registration. The latter category include (amongst others) floating charges and certain fixed charges, including a mortgage on a ship or aircraft.

The prescribed particulars of the charge together with a certified copy of the document creating it (translated if not in English) should be delivered to the Registrar of Companies before the end of the period allowed for registration, which is 21 days from the day after its creation unless it was created abroad.

The new rules for charge registration by Registered Overseas Companies are very similar to those which apply to English registered companies, and include the receipt of a certificate of registration of charge from the Registrar which is conclusive evidence that the registration requirements have been satisfied. Similarly, the consequences of failure to register a charge which should have been registered under the Regulations, will generally make the charge void against a liquidator, administrator or a creditor of company.

The new Regulations have brought long awaited certainty regarding which charges should be registered by overseas companies, and whilst not perfect, should reduce the number of charge registrations required on many ship finance transactions. It will also give potential creditors the opportunity to see, by consulting the register, whether floating or certain fixed charges exist over a Registered Overseas Company's assets which would reduce the funds available for unsecured creditors in a liquidation.

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