



## Scottish security reforms: Positive impact on fund finance

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Scottish limited partnerships (SLPs) regularly feature in fund structures. In addition to their tax transparency, the attraction of SLPs in fund structures is that, unlike limited partnerships constituted elsewhere in the UK, they have separate legal personality from their partners. This means that they can own assets, enter into contracts, borrow money and be sued all in their own name.

### **Reforms to Scottish security laws**

Recent welcome changes to Scots law mean that fund borrowers and lenders now benefit from modernised ways of granting and taking security over rights and assets related to SLPs. The changes were introduced by the Moveable Transactions (Scotland) Act 2023 (**MTA**), which came into force on 1 April 2025.

Most forms of security taken in fund finance deals with a Scottish dimension are taken by way of assignment (assignment) in security of rights. The MTA significantly modernises Scots law on assignments by permitting future rights to be captured, by creating a new registration route to security perfection, and by streamlining existing intimation (notice) provisions. Assignations can be perfected by registration in a new online register as an alternative to perfection by intimation, and intimation can now be effected by electronic notice.

The MTA also creates a new fixed security (the statutory pledge) perfected by registration in a second new online register. A statutory pledge can be taken over shares in a Scottish company without the need for the shares to be transferred to the secured creditor (as was the only way pre-MTA of creating fixed security over shares in a Scottish company).

### **Fund finance Scots law security packages**

In a fund finance transaction, where the fund is an SLP, a Scots law security package can include a combination of any one or more of the following:

- security from the SLP and the General Partner (**GP**) (or the manager) over:
  - the Limited Partner (**LP**) unfunded investment commitments; and
  - the rights to make calls for and receive the LP commitments (and related rights, such as enforcement rights);
- security from the GP and / or LPs over their rights to receivables (ie their economic interest) in the SLP;
- security from the SLP over
  - its distribution rights and assets;
  - the Scottish bank accounts into which investor commitments or fund distributions are paid; and / or
- security over shares in a Scottish GP.

Security taken in respect of the SLP's assets depends on the type of asset involved. Security over shares in a Scottish limited company in the fund structure is taken by a Scots law share pledge.

### **MTA improvements to Scots law security packages**

Key MTA improvements to the ways in which security interests can be taken over various rights related to an SLP in a fund structure are set out below:

- **Perfection by registration:** under the MTA, assignments can be perfected by registration in a new online register without the need to give notice to affected parties in order to perfect the security. Pre-MTA market best practice of intimation by recorded delivery post is a thing of the past (as is the 1862 law that best practice derives from), reducing costs and administrative burden, especially where funds have an international investor

base. Notices may continue to be given to ensure that set off is ruled off and the notice recipients are made aware of restrictions on the SLPs' ability to make changes to the underlying contractual arrangements / limited partnership agreement.

- **Modernised notice provisions for perfection by intimation:** where parties choose to perfect assignments by notice (and there may be reasons, including confidentiality, to do this), the MTA permits electronic notice, including via an investor portal if it meets the MTA requirements. This reduces costs compared to paper notices by recorded delivery.
- **Security over future rights:** MTA assignments can cover future rights, giving lenders comfort that assigned rights will include the commitments of all LPs (including new LPs and increased or transferred LP commitments) during the term of the facility, without the need for supplemental assignments and relative notices. This is particularly appealing for funds with multiple closings seeking subscription line financing at first fund closing, after which new LPs may be admitted.
- **Performance to the assignor:** the MTA allows continued performance by the investor to the SLP, facilitating the continued operation of the fund and interaction with its investors, while recognising effective security arrangements. Perfection of an assignment no longer requires lender control of drawdowns and distributions (for example countersignature by lenders of drawdown notices), or for accounts into which commitments or distributions were paid to be blocked. This reduces administrative burden.
- **Security over partners' partnership / ownership interests:** emerging practice under the MTA is for assignments of partnership (ownership) interests to be structured such that the rights, to the extent that they are capable of assignment under the MTA, do not transfer until a trigger event has occurred. The assignments are registered but the assignee / secured creditor will not become a partner in the SLP (and assume the obligations attached to such role) until they serve notice following the trigger event, and, where required, appropriate advertisements are placed in the Edinburgh Gazette.
- **SLP bank account security:** bank account security under the MTA continues to be by assignment in security but perfection of the security right no longer requires lender control of the accounts, or for accounts to be blocked.
- **Share security:** MTA security over the shares in a Scottish limited company in the fund structure can be taken by the new statutory pledge, without the need for the shares to be transferred to the lender (and so avoids the PSC, pensions liability and NSIA notifications risks at the point of taking security). MTA share security can also cover future shares, without the need for supplemental security. This will improve the availability of this type of security and reduce costs where additional shares are issued.

### Final comments

Brodies have been actively involved in the development of these welcome step-change reforms for many years. The MTA significantly benefits many areas of Scottish finance law and has brought about a positive shift towards simplified security arrangements in fund finance transactions.

### Key Contacts



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