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Funding the Scottish food and drink sector in 2026: change and continuity

Introduction

Changes to Scots law which came into force in 2025 provide additional security options in financing food and drink businesses with a Scottish element.

What is suitable will depend on the nature of a business' assets and how these are used operationally.

Change: The Moveable Transactions (Scotland) Act 2023 (the "2023 Act")

Coming into force on 1 April 2025, the 2023 Act created a new fixed security right over corporeal (e.g., vehicles and whisky casks) and certain classes of incorporeal (e.g., IP and company shares) moveable property: the statutory pledge.

Previously, fixed security could not be taken over Scottish moveables without:

- for corporeal moveables, physically delivering these to the secured creditor (though an arrangement involving constructive delivery and bonded warehouses was used in the whisky industry); or
- for incorporeal moveables, transferring these to the secured creditor in security. If the security grantor wanted to use those assets arrangements would need to be in place to allow this (e.g., licence back agreements for IP or proxy arrangements for shares).

Neither of these are features of a statutory pledge. This allows businesses to proceed with out losing possession/title to key assets and funders get a fixed security without needing to deal with holding assets it does not want to.



Continuity: floating charges and standard securities

However, the 2023 Act should not be viewed as the sole consideration in terms of determining the security structure of a deal. If a business needs to routinely dispose of assets the "torpedo" provisions of the 2023 Act applying to statutory pledges are at risk of being triggered. These extinguish the whole security if the secured creditor acquiesces in a disposal of any of the secured assets without giving specific approval within 14 days of the disposal. The need for specific approval creates an administrative burden which can be disproportionate if being sought regularly.

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In these situations, food and drink businesses and funders will likely consider relying on an all-asset Scottish floating charge (as was done prior to the 2023 Act). This security allows disposals in the ordinary course of business until certain events cause it to attach to the assets of the company. Stock-in-trade can be dealt with prior to security enforcement. If, however, there are key moveable assets which will be owned by the company for a number of years, such as casks which will be aged for a prolonged period, statutory pledges will likely be more useful.

The situation in terms of security over heritable property (i.e., land and buildings) was not affected by the 2023 Act. Standard securities remain the only option.

What this means for businesses and funders

At the heads of terms stage when a security package is being negotiated, parties should:

- identify significant moveable (including IP and shares in subsidiaries) or heritable assets over which security can be taken; and
- if a business needs to routinely deal with stock, consider whether floating charges are more appropriate.

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