

### Summary of the differences between property lending in England v Scotland

The regimes in Scotland and England are very similar. They share the same main statutes – Companies Act 2006 and Insolvency Act 1986.

#### **Purchase transaction**

<b>England</b>	<b>Scotland</b>
Purchase contract – in standard form	Missives – series of formal letters between seller’s and purchasers’ solicitors agreeing terms for the purchase
Exchange of contracts – usually 10% deposit paid	Conclusion of missives – however no deposit is paid as standard
Transfer Document – TR1 in standard form	Disposition – document agreed between the seller’s and purchaser’s solicitors transferring title
Legal completion	Settlement

#### **Types of security**

<b>England</b>	<b>Scotland</b>
<u>Legal Charge</u> <ul style="list-style-type: none"> <li>• Legal mortgage over the freehold or leasehold property</li> <li>• Registered at Land Registry</li> </ul>	<u>Standard Security</u> <ul style="list-style-type: none"> <li>• Legal security over the heritable property or a lease in favour of the borrower for a term of 20 years or more</li> <li>• Registered at the Land Register</li> </ul>
<u>Debenture</u> <ul style="list-style-type: none"> <li>• Fixed charges over company’s key assets as well as a floating charge over all the assets that are not subject to the fixed charge</li> </ul>	<u>Floating Charge</u> <ul style="list-style-type: none"> <li>• Unless otherwise agreed secures all assets of the company whether or not they are subject to a fixed charge – the assets charged change</li> </ul>

<ul style="list-style-type: none"> <li>Registered at Companies House in England</li> </ul>	<p>during the term of the loan as they are bought and sold</p> <ul style="list-style-type: none"> <li>No fixed charges over company's assets</li> <li>Registered at Companies House in Scotland</li> </ul>
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**Enforcement Options**

England	Scotland
<ul style="list-style-type: none"> <li>Legal charge gives power to appoint a fixed charge receiver over fixed assets</li> </ul>	<ul style="list-style-type: none"> <li>No power to appoint a fixed charge receiver in Scotland. Enforcement under a standard security is known as "calling up" and mechanisms are set in statute and must be strictly adhered to</li> <li>Result – significantly more complicated, time consuming and expensive than in England and thus taking longer for the lender to take control of the property than in England</li> </ul>
<ul style="list-style-type: none"> <li>Debenture gives power to appoint an administrator of the company and/or fixed charge receiver over fixed assets</li> </ul>	<ul style="list-style-type: none"> <li>Floating charge gives power to appoint an administrator of the company. As the administrator would have control of the property on appointment often a preferred enforcement option to calling up, if available</li> </ul>