

a negative pledge clause) and the person taking the fixed charge knew this to be so. At the present time this has to be actual knowledge, because registration of the charge at Companies House gives only constructive notice of the charge but not its particulars (see *Wilson v Kelland* [1910] 2 Ch 306). However, ss 860–877 of the CA 2006 provide that registration of the charge gives constructive notice also of its contents or particulars. The effect would be that the negative pledge clause would be constructively communicated and *Wilson* overruled.

There may be agreement between lenders that a particular floating charge shall rank in front of a particular fixed charge. Where this is so the first ranking floating charge remains subject to preferential debts and the second ranking fixed charge is subject to the prior ranking floating charge and the calls of the preferential debts on it (*Re Portbase (Clothing) Ltd, Mond v Taylor* [1993] 3 All ER 829).

Other floating charges

If a company is to have power to create a second floating charge over its undertaking ranking before the first, the debenture securing the first charge must so provide. Otherwise floating charges rank for priority in the order in which they were created.

In this connection, it is worth noting that in *H & K Medway Ltd, Mackay v IRC* [1997] 2 All ER 321 the High Court decided that if a company grants two floating charges over its assets in favour of two different debenture holders and the second ranking debenture holder appoints a receiver first, the preferential creditors of the first ranking debenture holder are entitled to be paid before the first ranking debenture holder even though that debenture holder is not the person appointing the receiver.

Garnishee orders (now called third-party debt claims for procedural purposes)

A garnishee order *nisi* may be issued on behalf of a judgment creditor as a method of enforcing judgment. It may attach to debts owed to the judgment debtor by others. Service of a garnishee order *nisi* operates as an equitable charge on the debt preventing the debt from being paid to anybody except the judgment creditor. However, the judgment debtor's funds in the hands of a third party, e.g. a bank, cannot in law be actually paid over to the judgment creditor until the garnishee order is made absolute. Between order *nisi* and absolute the judgment debtor may bring evidence to the court as to why the funds should not be paid over to the judgment creditor, which will normally be difficult since the creditor has gone to judgment. If the funds are paid over while the order has not been made absolute, the third party, e.g. a bank, must replace the funds of the judgment debtor even though a debt of the judgment debtor has, in effect, been paid because the bank has no authority to make the payment (see *Crantrave Ltd (in Liquidation) v Lloyds Bank plc* [2000] 3 WLR 877, CA where a liquidator recovered a sum of money paid by the company's bankers to the judgment creditor at a time when the relevant garnishee order was not absolute).

Other postponements

Judgment creditors may, in certain circumstances, be able to retain the proceeds of sale of the company's goods taken in execution by bailiffs. Finance companies may be able to recover goods which the company has taken on hire-purchase.

However, in the case of an administration which will be the normal insolvency procedure followed by holders of floating charges now that administrative receivership is restricted to special cases that will be considered in the chapters on corporate insolvency, a moratorium prevents execution by judgment creditors who have not actually taken property and sold it through the bailiff system. A finance company would be prevented by the moratorium from recovering goods on hire-purchase and the administrator can ask the court for an order to sell the goods provided the proceeds are applied to paying the sums payable under the hire-purchase agreement plus any additional sum to make the proceeds up to market value where the sale has been below market value. This is to assist the administrator to rescue the company by selling it as a going concern without having to ask permission of owners of goods such as finance companies to sell them.

As regards landlords who may seek to enforce non-monetary remedies to deal with any liabilities outstanding under the company's lease, para 43(4) of Sch B1 to the Insolvency Act 1986 prevents a landlord or other person to whom rent is payable from exercising any right of forfeiture except with the leave of the court or the consent of the administrator.

Validity of charges

Consideration will now be given to how a charge may be made invalid by failure to register particulars of it, or where it is a floating charge by avoidance under the Insolvency Act 1986 or because the charge is regarded under the same Act as a preference.

Registration of charges

The CA 2006 provides for the registration of certain charges created by companies over their assets. Accordingly, the secured debenture given typically to a bank to secure an overdraft must be registered at Companies House. CA 2006, ss 860 and 861 apply.

Charges to be registered

These are as follows:

- 1 A charge on land or any interest therein belonging to the company and wherever situate, other than a charge on rent payable by another in respect of the land.
- 2 A charge on the company's goods where the company is to retain possession of the goods. If the lender takes possession of the goods, as in a pawn or pledge, or takes a document of title to them so that the borrower cannot dispose of them effectively, the charge need not be registered.
- 3 Charges on the following intangible movable property of the company:
 - (a) goodwill;
 - (b) intellectual property – this covers any patent, trade mark, service mark, registered design, copyright or design right, or any licence under or in respect of any such right. In the case of a trade mark the charge is ineffective unless the charge is also registered

at the Trade Mark Registry under s 25 of the Trade Marks Act 1994. This is just as important as registration at Companies House;

- (c) book debts, whether originally owing to the company or assigned to it;
- (d) uncalled share capital of a company or calls made but not paid;
- (e) charges for securing an issue of debentures;
- (f) floating charges on the whole or part of the company's property.

It should be noted that (e) and (f) above are 'sweep-up' provisions, and (e) above would cover an investment company whose only assets were shares and debentures of other companies. Such a company would have to register a charge over those assets to secure a debenture even though the securities which are its assets are not included specifically under other headings.

So far as (f) above is concerned, this would cover a floating charge which was not part of the issue of a debenture, and so a charge over mixed goods by means of a retention clause would be registrable under this head.

Contractual liens

The High Court has decided that a contractual possessory lien, i.e. the right to retain another's property until he has met a debt due in respect of that property coupled with an eventual right of sale of the relevant property, does not amount to a charge that requires registration (*Re Hamlet International plc: Re Jeffrey Rogers (Imports) Ltd* [1998] 95 (16) LSG 24).

Thus, A sells goods to B and takes a contractual possessory lien over the goods until B pays for them. There is also a power for A to sell the goods if B fails to pay. B goes into administration as in the *Hamlet* case. The administrator of B claims the goods regarding the lien as a type of floating charge which is void against the administrator because it is unregistered. In this case the lien (which is not a charge) is valid since registration is not required of such an arrangement. A keeps the goods and does not have to deliver them into an insolvent company's assets and take the very great risk of receiving payment. If A has delivered the goods to B, then, of course, the lien being possessory is lost and the administrator may deal with the goods.

Charges by banks over customer deposits

It was held by the House of Lords in *Re Bank of Credit and Commerce International SA (No 8)* [1997] 4 All ER 568 that a bank could take a charge over its customers' deposits, thus doubting and refusing to follow the decision in *Re Charge Card Services Ltd* [1986] 3 All ER 289 which had regarded this as a 'conceptual impossibility'. The decision was because a deposit with a bank was a debt owed by the bank to the customer concerned, and as such was an asset in the customer's hands which could be charged by him to anyone. The case is of significance to banks since it extends their options in taking security over third-party deposits. Banks may be enabled in future to use deposits of subsidiary companies as assets to be set off against loans made to parent companies. Until this decision, banks have had to rely on special contractual arrangements which have not always survived the liquidation process. The decision in *BCCI (No 8)* raises the question of whether charge-backs should be registered. The House of Lords left this matter open but given that a charge is void unless registered the safest course would be to submit the charge for registration as an equitable floating charge.

Registration at Companies House

CA 2006, ss 866 and 870 state that it is the duty of the company to deliver particulars of a charge within 21 days of its creation. CA 2006, s 870 clarifies how the 21-day registration period is measured:

- If the charge is created in the UK, with the day after the day on which the charge is created.
- If the charge is created outside the UK, with the day after the day on which the instrument by which the charge was created or evidenced (or a copy of it) could, in due course of post (and if despatched with due diligence), have been received in the UK.
- If the charge is on property which is acquired by a company, with the day after the day on which the acquisition is completed.
- If the charge is on property outside the UK which is acquired by a company and the charge is created outside the UK, with the day after the day on which the instrument by which the charge was created or evidenced (or a copy of it) could, in due course of post (and if despatched with due diligence) have been received in the UK.

CA 2006, s 881 also applies, and in general the date of creation of the charge is when the instrument involved is signed on behalf of the company. The delivery of particulars can be made by ‘any person interested in the charge’ such as the lender, and the document creating the charge must also be filed. It is an offence for a company and every officer in default to fail to deliver particulars of a charge within the specified time.



Re Advantage Healthcare (T10) Ltd [1999] All ER (D) 1294

In this case the High Court held that although in the normal course the applicant for registration of a charge is required to include correctly the company’s number, that number is not a particular of the charge to be registered. Thus failure to give the correct number does not constitute a breach of s 395 of the 1985 Act and the registration is valid.

Comment

The inclusion of the wrong company number, if not detected and changed, does, of course, affect those who search the register for the chargor. Presumably such cases are rare. The High Court was apprised of this problem but nevertheless found the charge valid.

The lender will usually take responsibility for the registration process because of the protection it obtains: firstly because the charge is registered and therefore not void, and secondly because registration establishes priority since charges registered earlier have priority over those registered later.

The Registrar will, under CA 2006, s 885, check the particulars and issue a certificate of registration which is currently conclusive evidence that the requirements of registration have been satisfied.

Effect of non-registration

If a charge is not registered as required by the CA 2006, it is void as against a liquidator or an administrator and any creditor of the company. Thus the holder of the charge becomes an unsecured creditor on a winding-up. However, the charge is not void against the company while it is a going concern and can be enforced, for example, by a sale of the assets charged. Such a sale cannot be set aside in the event that a liquidation takes place afterwards. In

addition, when the charge becomes void, all sums including any interest payable become payable immediately on demand.

It will be noted that under the CA 2006 an unregistered charge is not void where exceptionally there is an administrative receivership.

However, the charge is void against a company when it is in administration or liquidation. Although CA 2006, ss 860 *et seq* refers to an unregistered charge being void 'against the liquidator or administrator', this means only that the relevant insolvency practitioner can employ the assets in the process of liquidation or administration for insolvency purposes. Yet, if a person holding an unregistered charge removes the property charged then unless the provisions of ss 860 *et seq* can be construed as making the charge void also against the company, a liquidator or administrator cannot sue for damages for conversion in a personal capacity because the asset is not his. Assets do not vest into the ownership of insolvency practitioners and ownership is essential in most cases for a successful action in conversion. If the charge is also void against the company then the insolvency practitioner can bring a claim in conversion on behalf of the company, as the administrator did successfully in *Smith (Administrator of Coslett (Contractors) Ltd) v Bridgend County Borough Council* [2001] UKHL 58, [2002] 1 All ER 292 where the House of Lords decided that CA 1985, s 395 must be regarded at least in an insolvency as making an unregistered charge void also against the company.

Registration out of time

It is necessary to ask the court to allow registration out of time. A usual condition imposed by the court is that late registration is to be allowed but 'without prejudice to the rights of any parties acquired prior to the time when the charge was registered'. In effect, then, the charge ranks for priority from the date of its late registration.

Registration out of time and insolvency

Except in very exceptional circumstances the court will not grant late registration where a liquidation has commenced. The court is also reluctant to give permission where liquidation is imminent (*Re Ashpurton Estates Ltd* [1982] 3 All ER 665). However, late registration was allowed in *Barclays Bank v Stuart London Ltd* [2001] 2 BCLC 316 where the order provided in effect that if winding-up commenced before the end of the extension time the liquidator could set it aside on application to the court thus reducing the holder of the charge to an un-secured creditor.

Releasing the charge: Companies House

Under CA 2006, s 887 and on application being made to him by the company that the charge has been released or redeemed the Registrar will enter a memorandum of satisfaction on the register.

Releasing the charge: act of parties

A security over property may be released by act of parties. An example is provided by *Western Intelligence Ltd v KDO Label Printing Machines Ltd* [1998] BCC 472 where the High Court held that when goods were transferred with the consent of the bank from a company in financial difficulties to a new company controlled by the same directors, the goods were released from a debenture granted by the original company to the bank.

Company's register

Sections 877 and 892 of the CA 2006 enable a company to keep its instruments creating charges and mortgages and its register of charges and mortgages in a place other than its registered office. Section 1136 of CA 2006 gives the Secretary of State power to make provisions by regulations specifying places other than a company's registered office at which a company's records, including its registers required to be kept available for inspection, may be kept. The company must enter in the register a short description of the property charged, the amount of the charge and the names of the persons entitled to the charge, except in the case of securities to bearer.

The Companies (Company Records) Regulations 2008 (SI 2008/3006) specify the inspection location which may be used as an alternative to the registered office, for those company records referred to in CA 2006, s 1136(2), which includes instruments creating charges and mortgages and the register of charges and mortgages. The alternative location is a single location that is situated in the same part of the UK (for example, England, Wales, Scotland or Northern Ireland) as the company's registered office. This is sufficiently flexible for a company to select an alternative location appropriate to its business.

The Companies (Trading Disclosures) Regulations 2008 provide that where a company has specified an alternative inspection location, it is required to disclose the address of that place and the type of records kept at that place to any person it deals with in the course of business who makes a written request for such information. The company is required to send a written response to that person within five working days of receiving the request.

As regards failure to register a charge in the company's register, there is a default fine on any officer of the company who is in default as well as upon the company itself, but the charge is still valid. In other words, it is only failure to register at Companies House which affects the validity of the charge.

The company must keep a register of debenture holders but only if the terms of issue of the debentures require it. The register, if it exists, must be kept at the registered office or the place where it is made up so long as it is within the country in which the company is registered. The register may be inspected free of charge by those who are registered holders of debentures and, in addition, shareholders in the company, and by other persons on payment of a fee. Members, registered holders of debentures and other persons may acquire a copy of the register on payment of a fee. The register of directors' interests must show their debenture holdings also. This register is dealt with more fully in Chapter 14.

➔ See p. 276

Because a power of inspection exists a company must maintain the register even though there are no entries in it if only to indicate that this is so.

Avoidance of floating charges

Under s 245 of the Insolvency Act 1986, a floating charge created by a company within one year before the commencement of its winding-up or the making of an administration order is void as a security for any debt other than cash paid or goods supplied to the company in consideration of the charge at the time the charge was created or subsequently, with interest, if any, thereon as agreed. The above provisions do not apply if the company was solvent immediately after the creation of the charge.

It was held in *Power v Sharp Investments Ltd* [1993] BCC 609 that no moneys paid to the company *before* the execution of the debenture would qualify for the invalidity exemption in s 245 unless the interval between the payment and execution of the debenture was minimal and could be regarded as contemporaneous.

➔ See p. 334

If the person in whose favour the charge was created was connected with the company, e.g. a director or shadow director (see further Chapter 17 ➔), the period is two years, and the charge is void even though the connected person gave consideration at the time or subsequently, and even though the company was solvent immediately after the charge was given.

The purpose of the section is to prevent a company which is unable to pay its debts from, in effect, preferring one of its unsecured creditors to the others by giving him a floating charge on its assets. There is no objection to the creation of a floating charge where the company actually receives funds or goods at the time or afterwards because these may assist it to carry on business, and indeed avoid winding-up or administration. The charge only extends to the value of the funds or goods supplied after it was given and does not secure the existing debt to the unsecured creditor. As regards goods supplied, the charge extends only to the price which could reasonably have been obtained for them in the ordinary course of business at the time when they were supplied. The security would not extend to the whole of the value of goods supplied at an artificially high price.

Practical points arising

- (i) Most importantly, a floating charge is valid as a security for loans made after the date it was created if the lender promised to make such loans (covenanted loans), and even if the lender did not (uncovenanted loans) (*Re Yeovil Glove Co Ltd* (1965), see below). Consequently, advances made to an insolvent company by its bank on an overdraft facility during the year before it is wound up are validly secured in the winding-up (or administration if relevant) by a floating charge given before the advances were made. The debenture creating the charge must expressly cover covenanted and uncovenanted loans, i.e. agreed loans and other loans not agreed at the time.



Re Yeovil Glove Co Ltd [1965] Ch 148

The company was in liquidation and had an overdraft of £67,000 with the National Provincial Bank Ltd. The overdraft was secured by a floating charge given less than 12 months prior to winding-up at a time when the company was insolvent. The charge was therefore void under what is now s 245 of the Insolvency Act 1986. However, the company had paid in some £111,000 and the bank had paid cheques out to the amount of some £110,000. The Court of Appeal held that under *Clayton's Case* (1816) 1 Mer 572, under which the earliest payments into an account are set off against the earliest payments out and vice versa, the overdraft, which was not validly secured, had been paid off and the floating charge attached to the money drawn out because the company had received consideration for this. It did not matter that the floating charge did not require the bank to make further advances. It did, however, expressly secure uncovenanted loans.

Comment

The Cork Committee said that this case defeated the object of what is now s 245. They thought it should be repealed by statute so that for the purposes of s 245 payments into the account should be treated as discharging debit items incurred after the creating of the floating charge before those incurred before it (see Cmnd 8558, para 1562).

- (ii) The period of one (or two) year(s) from the creation of the floating charge is calculated from the date when the instrument imposing the charge is executed and not from the date of the issue of the debenture which may be later.
- (iii) If an unsecured creditor takes a new loan to the company on the security of a floating charge on the understanding that the loan will be applied immediately in paying off his existing unsecured debt, the floating charge will normally be invalid unless the company is solvent immediately after the charge is given (*Re Destone Fabrics Ltd* [1941] 1 All ER 545).
- (iv) Floating charges are invalidated only if the company is wound up or goes into administration, and so if before either of those events it redeems a floating charge which would have been invalid in those situations, the liquidator or administrator cannot require the owner of the charge to repay what he has received (*Re Parkes Garage (Swadlincote) Ltd* [1929] 1 Ch 139). However, if the redemption takes place within six months (two years if the debenture holder is a connected person) before the winding-up or administration it may be a preference of the debenture holder, in which case the relevant insolvency practitioner can recover the amount paid to the debenture holder under s 239 of the Insolvency Act 1986 (see below).

The s 245 avoidance provisions do not apply to fixed charges, but the preference provisions of s 239 do (see below).

Preference

A liquidator or an administrator may avoid a fixed or floating charge as a preference under s 239 of the Insolvency Act 1986 if:

- (a) in giving the charge the company was influenced by a desire to better the position of a creditor or surety. Thus, to give a charge to a lender where the directors had personally guaranteed the loan would be a preference (see *Re Kushler* [1943] 2 All ER 22). However, the giving of a charge to an unsecured creditor about to levy execution on the company's goods may very well not be, because it would be given to preserve the company's assets at market value, bearing in mind that sheriff sales are often at throwaway prices;
- (b) the company was insolvent when the charge was given; and
- (c) the charge was given within the six months preceding the commencement of the winding-up or administration.

Where the creditor preferred is a connected person, e.g. a director or shadow director, the time period is two years and (a) above is presumed.

In this connection, the High Court decided in *Weisgard v Pilkington* [1996] CLY 3488 that a company's transfer by lease of certain of its assets (six flats) to two of its directors before it went into insolvent liquidation – ostensibly in discharge of a debt the company owed them – was a preference to connected persons so that the transfer must be reversed and the flats returned to the company. The directors had not displaced the presumption under s 239 that the transfers constituted a preference to connected persons. The transfers had put the directors in a better position than they would have been in given an insolvent liquidation. This

was so even in regard to two of the flats which were charged to a bank to secure an overdraft since the charge operated to reduce the directors' liabilities as guarantors of that overdraft.

Most recently, in the case of *Re Harmony Care Homes Ltd* [2010] BCC 358, the joint administrative receivers of a company applied to the Chancery Division for a direction pursuant to s 35 of the Insolvency Act 1986 as to whether the book debt proceeds collected by them during the course of the administrative receivership should be subject to fixed charges to the holders of the debentures, or as subject to floating charges to the preferential creditors under s 40 of the 1986 Act. It was the judge's conclusion from the opening of a designated account the company could not make and did not make any use of the money paid into the account without the chargee's written instructions to the bank. It thus appeared that all book debts collected in by the company from the inception of the debenture were subject to the chargee's control and that from the outset, the status of the security over the book debts was specific and ascertained. Thus there was never a moment from when the company was entitled to remove the charged assets from the security. The effect of the debenture and the arrangements the parties put in place was to disentitle the company from using the proceeds of the book debts as a source of its cash flow or for any other purpose. The security granted in respect of the book debt realisations was a fixed charge.

Remedies of secured debenture holders

Where the debentures are secured on the assets of the company the following main remedies are available:

- (a) the property charged may be sold or leased;
- (b) a receiver may be appointed to take possession of the property.

Where the debenture is secured by a fixed charge, these remedies are available under s 101 of the Law of Property Act 1925. However, since a floating charge may not be covered by s 101 (see *Blaker v Herts & Essex Waterworks* (1889) 41 Ch D 399 under earlier similar legislation), the remedies are invariably given in the debenture.

After sale of the assets in a receivership any surplus, after paying off the debenture holders and the cost of realisation and receivers' costs and charges, belongs to the company.

BIS consultation

In March 2010, the Department for Business, Innovation and Skills (BIS) commenced a consultation exercise on the registration of company charges. The consultation document states that it makes proposals to revise the current scheme for the registration of company charges under the Companies Act 2006 based on the 2001 recommendations of the Company Law Review and the subsequent advice of the Law Commission. They involve possible changes to: which charges must be registered; how charges may be registered including the introduction of electronic registration at Companies House; and the consequences of registering and not registering a registrable charge.

Essay questions

- 1 Richard is the founder, managing director and controlling shareholder of RST Ltd. For some years Richard kept the company afloat by making a number of unsecured loans to it. At the last tally the company owed him £20,000, and yet needed a further loan of £5,000. Richard is willing to advance the money, but realising that the company is very likely to go into liquidation, and with a view to salvaging something for himself from the company's assets, causes the company to execute in his favour a deed of debenture secured by a floating charge over all the assets of the company. The floating charge is stated to secure not only the £5,000 paid to the company at the time the charge was executed but also the £20,000 outstanding debt owed him by the company.

The company goes into insolvent winding-up three months after the floating charge is executed. Its assets are estimated at a little over £25,000, and its unsecured debts add up to £20,000.

Discuss the competing claims of Richard, who is a secured creditor, and the company's unsecured creditors.
(University of Plymouth)

- 2 In January 2003 Jones made an unsecured loan of £3,000 to a company of which he was a director. In January 2005 the directors resolved that in consideration of a further loan of £2,000 Jones should be issued with a debenture for £5,000, secured by a floating charge on the assets and undertaking of the company. Jones made this further loan and the debenture was issued. The company was wound up four months later.

Advise the liquidator as to the points to bear in mind regarding this transaction. Would your answer be different if the debenture had been secured by a fixed charge on the company's factory?
(The Institute of Company Accountants)

- 3 Compare and contrast equity shares and debentures as alternative forms of investment, explaining also the difference between fixed and floating charges.
(Kingston University)

- 4 'A person who lends on the security of a specific mortgage of a company's property is always entitled to repayment on his loan out of the proceeds of sale of the mortgaged property before any other creditor. A person who takes a floating charge is not in as secure a position.'
Pennington.

Why is the holder of a floating charge in a less favourable position?

(The Institute of Chartered Accountants in England and Wales)

- 5 (a) What are the statutory requirements in respect of calling an annual general meeting? What is the usual business at an annual general meeting of a company?
- (b) What is an extraordinary general meeting? When must the directors call such a meeting? What consequences may follow the directors' failure to call such a meeting?
- (c) The directors of Fireworks Ltd, a company whose articles are regulated by *Table A*, wish to give effect to the following matters:
- (i) to change the company's name to Chatterbox Ltd;
 - (ii) to increase the company's share capital to £30,000.

Explain to the directors the requirements of the Companies Act 1985 in relation to both the calling of a meeting and the passing of resolutions to give effect to these proposals.

(The Association of Chartered Certified Accountants)

- 6 (a) Distinguish between (i) ordinary, (ii) special and (iii) extraordinary resolutions. Indicate, in particular, the length of notices and matters in respect of which each resolution is required.

AND

- (b) Fred is a managing director of Pine Wood Ltd. He also owns 25 per cent of the company's ordinary shares which carry voting rights. It has just been discovered by the other directors that Fred is acting as a consultant to another company which is in direct competition with Pine Wood Ltd. The other directors wish to propose an alteration of articles to restrict Fred's powers. Advise the directors on whether and how they may alter the articles.

(Glasgow Caledonian University)

Test your knowledge

Four alternative answers are given. Select ONE only. Circle the answer which you consider to be correct. Check your answers by referring back to the information given in the chapter and against the answers at the back of the book.

- 1 Ouse Ltd has borrowed £10,000 from the Barchester Bank which is secured by an equitable charge over the company's freehold land. The charge, which states that it will rank in front of subsequent charges including fixed charges, has been registered. Later on Ouse granted a fixed charge over the freehold land to Onslow who had made it a loan. Onslow has not examined the Register of Charges at Companies House and has no other knowledge of the bank's equitable charge. Which charge has priority?
- A The equitable charge taken by the bank because the first in time prevails.
 B The equitable charge taken by the bank since registration is equivalent to notice of the contents of the charge.
 C Onslow's legal charge because legal charges take priority to equitable charges.
 D Onslow's legal charge since he had no notice of the equitable charge.
- 2 Thames Ltd is insolvent and is being wound up. The bank has a floating charge over its assets in regard to an overdraft which has not been registered. What is the effect of this?
- A The charge is void against the liquidator and the bank proves as an ordinary creditor.
 B The debt is void as against the liquidator and the bank will get nothing.
 C The charge is voidable by the liquidator if the company was insolvent when the charge was created.
 D The charge is void against subsequent secured creditors and the bank loses its priority accordingly.
- 3 Tay Ltd has assets of £10,000. Its trade creditors are worth £20,000 and it has an unsecured overdraft with the Barchester Bank of £20,000. Tay wants to increase the overdraft facility to £30,000. The bank has agreed and has been given a floating charge over Tay's assets to secure the overdraft. Tay Ltd is now in liquidation. Given that the overdraft is repayable on demand, how much is the bank entitled to as a secured creditor?
- A £30,000 B £20,000 C Nothing D £10,000
- 4 Within how many days of its creation must a charge over the assets of a company be registered?
- A Twelve days B Twenty-one days C Fifteen days D Fourteen days