



## Legal charges and filing them at Companies House

### Introduction:

In the United Kingdom, legal charges play a crucial role in securing loans and protecting creditors' interests. They are an integral part of business and the legal sphere, serving to establish priority rights and enforce repayment obligations on borrowers. In this article, Gaia Hinchliffe and Kyrran Dearnley-Porter in our Corporate and Commercial department aim to provide a detailed understanding of legal charges, including their types, usage, associated conditions, governing rules, filing requirements with Companies House, and the consequences of not following the correct filing procedure.

### Types of Legal Charges:

- **Fixed Charge:**  
A fixed charge creates a specific and identifiable security interest over an asset or property. It attaches to particular assets, such as land, buildings, machinery, or intellectual property. This charge restricts the borrower from selling or disposing of the asset without the lender's consent. In case of default, the lender has the right to enforce the charge and recover the debt by selling (or otherwise dealing with) the charged asset. A fixed charge ranks above a floating charge in the order of repayment on insolvency.
- **Floating Charge:**  
Unlike a fixed charge, a floating charge does not attach to specific assets but rather to a class of assets (or in certain cases, all assets) that may change over time (e.g. inventory). The benefit of a floating charge is that it allows the borrower to continue dealing with the assets without any requirement to consult the lender. This charge "floats" until it crystallises upon the occurrence of certain events, such as default or insolvency. Once crystallised, the floating charge converts into a fixed charge, giving the lender control over the assets covered. A borrower may seek to obtain a letter of non-crystallisation from a lender if they intend to act in such a way that would amount to default of the charge, and as such see the floating charge crystallise into a fixed charge.

Sometimes, lenders will want to secure their investment by way of a fixed and floating charge – this is known as a 'debenture'. Debentures are used in a range of financing transactions and their all-encompassing nature means that they incorporate many types of security over a wide range of assets. Debentures generally include assignment of intangible assets (for instance, material contracts, insurance policies and intellectual property rights), fixed charges over specific assets, floating charges over all of the other assets not secured by the fixed charge and legal mortgages over real property.

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Often, a business will seek multiple forms of investment, and as such may have more than one creditor that has charges over their assets/property etc. In order to determine which charges rank ahead of others, lenders will often want to employ a Deed of Priority. This Deed sets out the order in which charges are to be repaid should a default occur. It effectively sets out the lenders by priority of repayment.

#### Conditions Attached to Legal Charges:

- Legal charges are often subject to various conditions and covenants that aim to protect the interests of both parties involved. These conditions may include:
- Repayment terms: Specifies the amount, schedule, and any interest rates on repayment.
- Events of default: Outlines the circumstances under which the charge is triggered, such as non-payment or other agreed upon terms.
- Enforcement provisions: Detail the lender's rights and remedies in case of default, including the power to take control of and sell the charged assets.
- Priority provisions: Determine the order in which different charges are satisfied during asset realisation.

#### Rules and Laws Governing Legal Charges:

The primary legislation governing legal charges in the UK is the Companies Act 2006, specifically Part 25 (Charges) and associated regulations. These provisions outline the requirements for registering and disclosing charges to ensure transparency and protect third-party interests. Failure to comply with these rules can have significant consequences.

#### Filing Charges with Companies House:

To create a legally binding charge, it must be registered with Companies House within specific timeframes. Failure to register within the prescribed period can render the charge void against liquidators, administrators, and other creditors. The process of filing charges involves submitting the appropriate forms, including Form MR01 for a charge created by a company and Form MR02 for charges acquired by a company.

#### Release from charges:

In order for a borrower to be released from a charge they must either satisfy the conditions of the charge in full or obtain express consent from the lender that they are no longer bound by the charge, usually by way of a "Deed of Release." If a borrower wants the record at Companies House to reflect such a change, a borrower must make a filing of either an MR04, to show that the debt secured by a charge has been satisfied either in part or in whole; or an MR05 to show that all or part of a property (or undertaking) secured by a charge has been released or has ceased to form part of the company's property (or undertaking).

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A borrower must be careful when satisfying a charge at Companies House – if a charge is satisfied prematurely and the lender is not satisfied that a borrower is fully released from a charge, it can be a time consuming and often expensive procedure to reinstate the charge, not least in that this can lead to thousands of pounds of court fees.

#### Filing charges at Companies House:

In order to register a charge at Companies House, an MR01 must be filed that sets out the particulars of the charge. Whilst any person interested in the charge can file it, (e.g. the borrower, the lender, or the lender's agent) it is usually the lender who registers the charge, as without the charge being registered they risk the consequences set out below. Once a charge is created and executed, it must be filed within 21 days. This 21-day period begins once the charge is created. The cost of registering a charge is £15 if done by WebFiling, or £23 if a paper-based filing is made. A certified copy of the charge instrument (e.g. debenture/mortgage etc) must be included when the charge is being registered, and this document will be shown to on the company's record.

#### Consequences of Not Filing Charges in time:

If a charge is not registered within the 21-day period, it can become difficult to recover the debt by a liquidator or administrator in the event of the company's insolvency; hence why it is more in the lender's interest to register the charge. Furthermore, it loses priority against other subsequent charges properly registered, potentially affecting the lender's ability to recover the debt or assets. Commonly, even if a charge is not registered with Companies House, a lender can still make a claim as an unsecured creditor, granted there is any money left in the pot once all secured creditors have been paid.

#### Consequences of Fraudulently Filing Charges:

Fraudulently filing charges is a serious offense and can result in severe penalties for those involved. Individuals found guilty of intentionally misleading information or falsifying documents may face criminal charges, including fines, imprisonment, or disqualification from acting as a director. Additionally, any charges filed fraudulently may be set aside by an administrator or liquidator or declared void, potentially exposing the lender to significant losses.

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Conclusion:

Legal charges form an essential aspect of financial transactions and lender protection in the United Kingdom. Understanding their types, conditions, governing rules, and filing requirements is crucial for both borrowers and lenders. Compliance with the laws surrounding charges is vital to ensure the validity and enforceability of these security interests. If you require any advice or are interested in hearing more about how we can help you with drafting, filing, or reviewing legal charges, please get in touch with us by emailing:

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