Categorisation of Fixed and Floating Charges

UK – 2026

Categorisation of a charge as fixed or floating will have a significant impact on how assets are dealt with on insolvency and creditor outcomes.

Typical fixed charge assets include land, property, shares, plant and machinery, intellectual property such as copyrights, patents and trademarks and goodwill.

Typical floating charge assets include stock and inventory, trade debtors, cash and currency, movable plant and machinery (such as vehicles), and raw materials and other consumable items used by the business.

You will need to consider how the charge was characterised when it was created, but that will need to be viewed in light of how the charged assets were dealt with in practice and the nature of those particular assets.

Key Considerations When Considering the Characterisation of a Charge

- Review with the charge document/instrument:
  - How is the charge described?
  - Look at the charging clause
  - Which assets are described as subject to a fixed charge and which ones fall within the definition of floating charge?
  - Consider what restrictions are placed on dealing with the charged assets
  - Review any undertakings in the charge document that deal with how the charged assets are to be dealt with
- Remember that how the charged assets are described in the charge document is not determinative. You must also consider the nature of the particular assets and how they were dealt with in practice.
- Do the assets fluctuate in and out of the business (i.e. stock and cash), or are they more fixed in nature (i.e. land, plant and machinery)?
- How were the assets dealt with in practice? If the charge document restricts the borrower from dealing with the assets in a particular way but, in practice, those restrictions were ignored or not put in place then the charge may be floating.
- Control is key for assets to be classed as fixed charge:
  - Did the bank retain control of the assets, i.e. did it operate blocked accounts, or was written permission provided to deal with particular assets or classes of asset?
  - How much control did the bank actually have in practice?
  - Has plant and machinery been plated?
- A floating charge will usually crystalise on insolvency, but that does not promote the charge to a fixed charge.
- Beware of hardening periods. If a floating charge has been created 12 months prior to insolvency (or two years if the chargee is a connected person), it may be invalid under s245 of the Insolvency Act 1986.
- The *Avanti* case blurred the edges of what can constitute a fixed charge when finding that the assets in that case were fixed despite the borrower having some ability to deal with the assets, but this is likely to be relevant only in limited circumstances.

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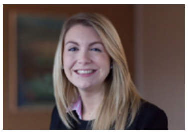

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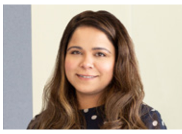

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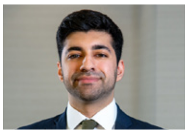

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