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FIXED AND FLOATING CHARGES AS SECURITY MECHANISMS IN CORPORATE FINANCE LAW IN THE UNITED KINGDOM

The goal of this article is to consider two types of charges under the English corporate finance law: fixed and floating. This work aimed to analyze the nature of the floating charge and provide a clear difference between fixed and floating charge security instruments based on landmark cases in the field. Classification of the charge has been an issue for the long-standing debate lasting more than 100 years and yet it remains a central point of numerous discussions nowadays. The author also illustrated issues related to a floating charge as opposed to a fixed charge, and provided her own view with regard to possible steps which could be taken in order to eliminate disadvantages of the floating charge.
Key words: *fixed charge, floating charge, debenture, chargor, chargee, lender, borrower, control over the charged assets.*

Introduction

Why is this topic of interest to the Ukrainian company law? Well, the answer to this question is quite straightforward. Because Ukraine has signed the EU-Ukraine Association Agreement in June 2014 which heralds a progressive Pro-Western economic development, the country is set on the path to reforms which will mean a shift to the European direction by reviewing current legislation, considering European legal and business practices with a possibility of incorporation some of the international practices into the national arena, and harmonizing domestic law with EU level. London is considered as a global capital of finance and law due to a high number and volume of business transactions which are occurring specifically there on the basis of various reasons. One of those reasons is the strong legal system and a variety of protective legal mechanisms available to investors. Ukrainian company law remains yet underdeveloped and that is why quite frequently parties decide to opt for the English jurisdiction for more flexibility and security while conducting a business transaction in the Ukraine. Because of trend in selecting the English jurisdiction and also, due to a major turn of the country to the European direction it is important to understand essential concepts of security mechanisms provided by the English law of corporate finance. Therefore this article is focused on two types of charge: fixed and floating, with the emphasis on the floating charge and its disadvantages to a lender. Perhaps, these types of security will challenge Ukrainian company law in a number of years.

The first part of the work will be focused on the nature of the floating charge and its distinction from the fixed charge. Landmark cases will be considered which established certain tests to determine the type of charge.

The second part will illustrate the disadvantages of the floating charge as a security for the lender.

The third part of the work will determine the ways to minimize the disadvantages of the floating charge and the author's personal view will be expressed.

Lastly, conclusion will be drawn.

1. What is the floating charge and how to differentiate it from a fixed charge

1.1 Essential definitions

Security is a key desired component in every aspect of our lives. It is also an essential part of complex, high-volume financial transactions, in particular where a company is financed through leverage. Alastair Hudson once said:

«taking security» is the process of seeking to use one or more of a number of

a legal structures to protect oneself against the risk that one's counterparty may go into insolvency or fail to perform its contractual obligation, or that one's contract be unenforceable, or against any of the other risks.»[1]

A common form of security is a charge. A charge is used to secure any transactions when a company raises its capital via an issue of a debenture. There is no statutory definition of a debenture, however, Chitty J. in *Levy v Abercorris Slate and Slab Co*[2] proposed that a debenture is:

«a document which either creates a debt or acknowledges it, and any of the document which fulfills either of these conditions is a «debenture».[3]

Therefore, to lend a capital a lender (chargee) will make sure that he is secured through a charge granted over the borrower (chargor) company's assets. If the chargor is unable to perform its financial commitments, the charge will then grant a right to the chargee to seize the chargor's property under the charge.[4]

Numerous attempts have been made to define what a charge actually means. One of the most commonly used definitions was established by Atkin L.J. in *National Provincial and Union Bank of England v Charnley*.[5] There he opined that there is no necessity to have one formal definition of the charge but in a case where parties have agreed that present or future property is created as a security for a payment of a debt and that the creditor has a present right to make this security available, there will be a charge.[6]

1.2 Floating charge

There is no statutory definition of the floating charge in the Companies Act 2006[7] however, in *Smith v Bridgend County Borough Council* Lord Scott accepted that a floating charge is a present security and can be also a security on future assets.[8]

The test which established the floating charge originates from *Re Yorkshire Woolcombers Association Ltd* [1903].[9] Romer L.J. stated that firstly, it must be established whether a charge is made over present or over future assets.[10] Secondly, a class of assets will have to be changing from time to time and lastly, a company, as a borrower, can deal with these assets in the normal way of business.[11] A fixed charge is usually granted over tangible property, such as a freehold factory. Although the first two characteristics of the floating charge can be also applicable to a fixed charge, the third characteristic is different: the chargor does not have a right to deal with the charged property unless he gets express permission from the chargee.[12] This explanation by Romer L.J. in Yorkshire Woolcombers has received a wide judicial acceptance. Although in theory the «floating charge» concept appears to be clear, in practice it has led to considerable debate and complications.

In theory, the main distinction between fixed and floating charges can be easily seen by level of freedom and control over the charged assets by the chargor in the case of the latter, but in practice the issue, is to what extent there is freedom to deal

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1 Alastair Hudson, *The Law of Finance* (first edition, Sweet & Maxwell, published in 2009, reprinted in 2012) 1428, 547.

2 Levy v Abercorris Slate and Slab Co (1837) 37 Ch. D. cited in Gerard McCormack, *Registration of Company Charges* (3rd edn., Jordan Ltd 2009) p. 321, 76.

3 Ibid.

4 Hudson, op. cit., p. 567.

5 National Provincial and Union Bank of England v Charnley [1924] 1 KB 431 p. 449 cited in Hudson, ibid., p. 568.

6 Hudson, ibid., p. 568.

7 Companies Act 2006.

8 Smith v Bridgend County Borough Council [2002] 1 AC 336 p. 357.

9 Re Yorkshire Woolcombers Association Ltd [1903] 2 Ch 284 p. 295.

10 Ibid., p. 295.

11 Ibid., p. 295.

12 Lang Thai, 'Charges over Book Debts in the United Kingdom and Australia: the Way Forward', *MqJBL* (2007) Vol 4, 267—294, p. 267.

with the assets.[1] This issue has often surrounded book debts under the charge, and this has been illustrated in a landmark case: *National Westminster Bank plc v Spectrum Plus Limited and Others* (*Spectrum Plus*).[2]

There was a debenture between Spectrum Plus and NatWest secured by a charge, which was intended to be fixed over the present and future book debts of Spectrum. The contract between the parties prohibited the borrower from charging or assigning the debts. There was also an obligation on the borrower to pay the proceeds into an account of the bank. Although this would appear to be more like a fixed charge, the debenture did not prohibit the borrower from dealing with the bank account. The issue in the case was whether the charge over the book debts amounted to a fixed charge as intended by the parties, or whether it was a floating charge.[3] The case reached the House of Lords and discussed other significant cases which are considered below.

According to *Re Yorkshire Woolcombers Association Ltd*[4] book debts fall in the category of fluctuating assets and therefore they are security under a floating charge. In that case, the debtor granted book debts as a security by deed to trustees who were able to appoint a receiver provided they give sufficient notice to the company.[5] It was also implied that the borrower could receive the debts and deal with its proceeds. The House of Lords held that there was a floating charge, since the borrower had freedom to operate with the charged property in the ordinary course of business dealings. It is not the label which the parties may put on the charge which is the most important, but the characteristic of the charge determined through detailed analysis of the charge instrument and conduct of the parties.[6]

The case of the book debts to be admitted as a floating charge remained until *Siebe Gorman & Co v Barclays Bank*[7] which added more fuel to the fire. Here, a borrower issued a debenture to Barclays over all its present and future book debts. Under the charge instrument, the borrower had to pay the proceeds of the debts into an account of the bank.[8] The company was also prohibited from assigning book debts as a charge to a third party. On this basis, the Court of Appeal decided that the charge was fixed and held that the book debts can be granted under a fixed charge. This became a landmark case because for the first time, it was decided that a charge over book debts could be fixed!

Re Brightlife Ltd[9] confirmed that labels should not play a significant role in deciding the nature of the charge as opposed to the characteristics and degree of control over the proceeds. As a result of this case, lenders attempted to create a hybrid type of charge dividing debts into receivables and its proceeds.

Receivables ought to be covered by a fixed charge whilst proceeds are more appropriate to be covered by a floating charge. This innovation was considered by the Court of Appeal in *Re New Bullas Trading*.[10] In this case, a compromise between the borrower and lender was achieved by giving the right to the borrower to deal with the book debts in the ordinary course of business whilst granting a fixed charge to the lender. However, this was not commercially satisfactory. The Court of Appeal held that book debts are indivisible because one cannot exist without another and

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[1] Wen Yie Tang, 'The elusive floating charge', *The Student Journal of Law*, p.5, available at <http://www.sjol.co.uk/issue-6/the-elusive-floating-charge>.

[2] National Westminster Bank plc v Spectrum Plus Limited and Others [2005] UKHL 41.

[3] Sara Worthington, 'An 'Unsatisfactory Area of the Law' — Fixed and Floating Charges Yet Again' *International Corporate Rescue*, Special Issue, Chase Cumbria Company (Publishing) Ltd 2010, 1–10 p. 1.

[4] Re Yorkshire Woolcombers Association Ltd [1903] 2 Ch 284.

[5] Ibid.

[6] Ibid.

[7] Siebe Gorman & Co v Barclays Bank [1979] 2 Lloyd's Rep 142.

[8] Ibid.

[9] Re Brightlife Ltd [1986] 3 All ER 673.

[10] Re New Bullas Trading Ltd [1994] 1 BCLC 485.

therefore, this hybrid type of charge was found to be invalid.[1]

The same type of conundrum was later considered in the case of *Agnew v Commissioner of Inland Revenue*[2] *(Agnew)* before the Privy Council, which held that separating debts into two categories did not make commercial sense. Lord Millet emphasised the importance of the third fold of the test created in *Re Yorkshire Woolcombers*,[3] and he created a new two-fold test.[4] Firstly, the court must examine the charge instrument and the parties intention through the language used in order to determine the parties' rights and obligations; and secondly, to base the type of charge on the established rights and obligations.[5]

Returning to the issue in *Spectrum Plus*, the Court held that the charge was floating on the basis that where a borrower can deal with the proceeds of the debts in the ordinary course of business, the charge will be held as floating, unless the chargee intervenes.[6] *Spectrum Plus* follows principles established in *Agnew*.[7] The House of Lords held that despite the fact that the charge was expressed to be fixed, the borrower was free to deal with the proceeds of the charge, which is the main characteristic of the floating charge. Therefore, The House of Lords held the charge to be floating, overturning the decision in *New Bullas*. Also, the decision in *Siebe Gorman* was overruled based on the *Agnew* principles.[8]

Spectrum Plus has become a very significant case already because it has attempted to stabilize the law in the area of fixed/floating charges and also it has considered the test of control.[9] The control over the book debts was in the hands of the borrower resulting in the charge being held to be floating.

To conclude, a charge must be examined on the two-fold test established in *Agnew*[10]:

1) the charge instrument must be analyzed through parties' intention, rights and duties; and

2) the charge will be considered with regard to the established rights and obligations of the parties.

The main difference between fixed and floating charges is the freedom and control exercisable upon the charge: in the fixed charge, the lender has control over the charged assets, whereas in the floating charge, the borrower has freedom to deal with the assets in their normal course of dealings.

2. The disadvantages of the floating charge to a lender

It is very important to consider the distinction between fixed and floating charges before examining the disadvantages of the floating charge.

A floating charge is attractive for a borrower as it allows a company to be leveraged without even having a specific asset, such as freehold factory. As can be seen, book debts or stock can be granted for security under a floating charge. Not only does a floating charge allow borrowers such freedom, it also entitles them to deal with the charged assets in its ordinary course of business. This is crucial to the chargor from a commercial point of view, but it less attractive to the chargee as its money can be at much more risk than under a more certain fixed charge.

Another disadvantage is when liquidation procedures of a company commence — the floating charge can be more easily set aside compared to a fixed charge (S. 245 of Insolvency Act 1986)[11]. The Act states that a charge created 12

1 Ibid.

2 Agnew v Commissioner of Inland Revenue [2001] UKPC 28 (Re Brumark Investments Ltd).

3 Re Yorkshire Woolcombers Association Ltd [1903] 2 Ch 284.

4 Agnew v Commissioner of Inland Revenue [2001] UKPC 28.

5 Ibid.

6 National Westminster Bank Plc v Spectrum Plus Limited and Others [2005] UKHL 41.

7 Agnew v Commissioner of Inland Revenue [2001] UKPC 28.

8 Ibid.

9 Tang., op. cit., p. 11.

10 Agnew v Commissioner of Inland Revenue [2001] UKPC 28.

11 S. 245 Insolvency Act 1986.

months before the insolvency procedures started is invalid.[1]

Certainly, one of the major disadvantages of the floating charge is its lower ranking compared to the fixed charge. This means that if a floating charge and a fixed charge are granted over the same asset, the fixed charge will have a higher priority than the floating charge and therefore the lender with a fixed charge will recover its money first. Moreover, in the floating charge scenario in liquidation certain liabilities of the chargor will be met first before any creditor will recover its stake as set out below. Clearly, this can make a creditor more cautious when lending the money protected by a floating charge. The liabilities which rank before a floating charge are:

— preferential creditors;[2]

— unsecured claims;[3]

— expenses of administration/liquidation.[4]

Preferential creditors are named in S. 386 of Insolvency Act 1986.[5] These are contributions to occupational pension schemes and remuneration of some certain level of employees.[6] Before the Enterprise Act 2002 came into force, levies to the Crown, i. e. income tax and VAT were also preferential.[7] After their abolition pursuant to the Enterprise Act, these debts are now in the status of unsecured.[8]

Unsecured claims have received protection under the so-called «Prescribed Part» S. 176A of Insolvency Act 1986.[9] «The liquidator, administrator or receiver shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts.»[10] This results in claims under floating charge to be set aside although this provision applies only to floating charges created after 15 September 2003.[11]

Expenses of administration/liquidation are paid in preference before any claims can be made on property subject to a floating charge.[12] This clearly pushes a floating charge holder down the pecking order.

Another potential disadvantage, or at least an administrative burden for a lender is that he must ensure that by taking a security as a floating charge, that the charge is registered according to the rules of Companies Act 2006.[13] Failure to register leads to the charge being invalid.[14] It can be seen that at the time when all the floating charged assets must be registered, only certain types of the fixed charge are required to be registered.[15] The first registered charge is ranked higher to the second and so forth. This places additional burden on the lender to control the borrower whether he has registered the charge and whether the same asset has been already registered in favour of another lender. Unregistered charges make the lenders completely unsecured and can cost them their investment. This is because they are the last in the queue to recover any money under liquidation. Such lenders are

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1 Ibid.

2 S. 40, S. 175 (2)(b) and Sch B1, para 65(2) of Insolvency Act 1986; and S. 754 Companies Act 2006.

3 S.176A of Insolvency Act 1986; Insolvency Act 1986 (Prescribed Part) Order 2003, SI 2003/2097.

4 Insolvency Act 1986, Sch B1, paras 70 and 99; Insolvency Act 1986, S. 176 ZA; Insolvency Act 1986, Sch A1, para 20.

5 S. 386 Insolvency Act 1986.

6 Ibid.

7 Enterprise Act 2002.

8 Claire Martin-Royle, Floating charges — not necessarily what they say on the tin, Jones Day, p. 74, available at <http://www.jonesday.com/files/Publication/60ba3b1a-58b3-42de-ab3d-c2d628af566c/Presentation/PublicationAttachment/2f2c219d-6313-4f63-b93f-c70b9d3582a2/IHL157%20p73-75.pdf>.

9 S. 176A of Insolvency Act 1986 (Prescribed Part).

10 Ibid.

11 Claire Martin-Royle, op. cit. p. 74.

12 S. 176 ZA Insolvency Act 1986.

13 Companies Act 2006 Part 25 S. 861.

14 S. 874 Companies Act 2006.

15 S. 860 Companies Act 2006.

considered to be lucky if they are able to recover anything after the claims of secured lenders and other financial liabilities have been satisfied.[1]

Furthermore, the floating charge creates undesired consequences for creditors in the control. For example, a chargee appoints the receiver before or after winding up the company. The other creditor is also entitled to appoint the receiver but will be overreached by the first receiver. This means that the second receiver will have to step aside and deliver possession of the assets to the first receiver in priority. Banks are therefore more cautious and less keen to lend by way of a floating charge as it causes dependency on other lenders.[2]

A further disadvantage of floating charges is the inherent uncertainty in value of the floating assets compare to the fixed charge property.[3] The value of the assets can only become certain upon the moment of crystallization, which is the precise moment when a floating charge becomes fixed. It «crystallizes» in the following scenarios:

— when a chargee appoints a receiver;[4]

— in the case of appointment of an administrator;[5]

— when liquidation has commenced;[6]

— upon cessation of chargor's business;[7]

Until quite recently these have been the only triggers of crystallization. However, in the case of *Re Brightlife*,[8] it became possible for the parties to determine the moment/reason for the crystallization with no need to wait until any of the above mentioned events happen. Upon crystallization the contractual right of the chargor to deal with the charged property comes to an end and the chargee becomes fully secured.[9]

To summarize, a fixed charge is significantly more secured to the lender than a floating charge and is therefore more favourable. A floating charge involves a procedure for its registration and leaves control of the charged assets in the hands of the borrower. Also, it is difficult to establish whether a floating charge over the same asset has also been granted to another lender and has therefore created a queue of creditors. Nevertheless, floating charge still exists and is frequent type of security in business.

3. Ways to minimize the disadvantages

The floating charge has been a subject of considerable debate amongst lawyers, financiers and academics for over a century and it is still creating some issues. Heavily criticized for its disadvantages to the lender on the one hand, and supported for its convenience and practicality to the borrower on the other hand, it is still frequently used as a security for debt financing. Whilst some have argued that floating charges should be abolished in favour of fixed charge,[10] others argue for a change to the law to make them more transparent and easier to operate with.[11]

Over several decades, a number of Committees have considered reforms of the floating charge concept and make it more

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[1] Gregory Mitchell, Angharad Start, 'Fixed and Floating Charges after Spectrum' (9 September 2005) *New Law Journal* 1309–1310 p. 1309.

[2] William James Gough, *Company Charges* (first edn in 1978, Butterworths, second edn. 1996) 1146 p. 898.

[3] Louise Gullifer, Jennifer Payne, *Corporate Finance Law* (published by Hart Publishing Ltd, 2011) 719 p. 244.

[4] Janet Dine & Marios Koutsias, «Company Law», (7th edn, edited by Marise Cremona, published Palgrave Macmillan, 2009) 340 p. 241.

[5] Ibid., p. 241.

[6] Ibid., p. 241.

[7] Ibid., p. 241.

[8] Re Brightlife Ltd [1986] 3 All ER 673.

[9] Fire Nymph Products Ltd v Heating Centre Pty LtD (in liquidation) (1992) 7 ACSR 365 p.373 per Gleeson C.J. See also Cretanor Maritime Co Ltd v Irish Marine Management Ltd [1978] 3 All ER 164 p. 173 per Buckley L.J.

[10] David Cabrelli, «Joined up thinking? An analysis of the Scottish and English Law Commissions' proposals for the reform of rights in security and charges granted by companies», *Journal of Corporate Law Studies*, October 2004 Volume 4 Part 2, 385—420, p. 399.

[11] Law Commission Consultation Paper, Registration of Security Interests: Company Charges and Property other than Land: LCCP No. 164 (2002) p. 46.

practical. Committees such as the Crowther Report on Consumer Credit of 1971,[1] the Halliday Report in 1986,[2] the Diamond Report in 1989[3] and more recently, the Law Commission Consultation Paper 2002[4] tackled in particular the problems associated with registration of the floating charge. The proposals have included replacing the registration process which was found to be out-of-dated and time consuming, with a simple notice-filing.[5]

A notice-filing system have already been established in America in 1952, in some provinces in Canada, New Zealand and in a few other jurisdictions in the world.[6]

Proponents of the notice-filing system argue that it will improve the efficiency.[7] They say, when the registration of the floating charge is mandatory and requires the charge to be registered within 21 days,[8] the notice-filing will be voluntary and therefore the creation of the charge can be filed at any time.[9] While the registration system places a burden in the case of a delay and can even make the charge invalid, notice-filing will not create such consequences at all because it will be voluntary.[10] Also, the other advantage according to the proponents of the notice-filing system is its flexibility. Compared with the registration, where every single charge must be registered and done so after its creation, a notice-filing system will allow multiply charges to be filed and it also admits future charges to be recorded.[11]

Despite numerous proposals to replace the current system of registration by the notice-filing, all attempts have failed and floating charge registration is still required at Companies House pursuant to S. 860 of the Companies Act.[12]

In its Discussion Paper 2, The City of London Law Society[13] covered two key policy issues which, in their opinion, must be tackled in order to reduce the problems caused by imperfections of the floating charge system. They are: the need for certainty of financial transactions and, the funding of administrations.[14] It has been suggested that the distinction between fixed and floating charges must be drawn more clearly, the assets from which the cost to administrators should be paid must be more precisely identified and the small percentage of all charged assets should be paid.[15]

In my opinion, the floating charge should not be abolished because it is clearly vital for the commercial transactions because it allows a business to be carried and at the same time debts to be paid off. It also provides some form of the security to a lender. The distinction between fixed and floating charges have been drawn from the test established in the *Re Yorkshire Woolcombers*.[16] Although a floating charge can be turned into fixed charge, before that it is a subject of

1 Crowther Committee 1971.

2 Halliday Report 1986.

3 Diamond Report 1989.

4 Law Commission Consultation Paper, op. cit.

5 Ibid., p. 80.

6 Ibid., p. 83.

7 Ibid., p. 84.

8 Companies Act S. 870.

9 Law Commission Consultation Paper, op. cit., p. 84.

10 Ibid., p. 82.

11 Ibid., p. 93.

12 Companies Act S. 860.

13 The City of London Law Society 'Secured Transactions Reform: Discussion Paper 2 Fixed and Floating Charges on Insolvency' February 2014, available at <http://www. citysolicitors.org.uk/attachments/article/121/20140219% 20Secured% 20Transactions% 20Reform% 20Discussion% 20Paper % 202% 20Fixed% 20and% 20floating% 20charges% 20v2.pdf>.

14 Ibid., p. 6.

15 Ibid., p. 7.

16 Re Yorkshire Woolcombers Association Ltd [1903] 2 Ch 284.

uncertainty. Surely, the issue can be reduced at the moment of crystallization but there is no need for the lender to take high risk and wait until such moment arises. I believe, the parties should draft a special clause in the charge instrument between the borrower and the lender and clearly specify the event/s which will trigger the crystallization. According to Gullifer and Payne,[1] such events which could be specified in the clause are: creating a new charge over the same asset, cross-default, breach of prescribed financial ratios, i.e. financial covenants. The power is within the parties own control. Instead of spending too much time, costs and energy on defining the charge which is likely to be disapproved by a Judge, the parties are able to reduce the uncertainties of the charge themselves when drafting the contract by inserting such a clause. This will give certainty to both parties and security to the lender today.

Conclusion

When a company raises its capital through the issue of a debenture it grants a charge as a form of security to the lender. There are two types of charge: fixed and floating. The test to differentiate both of them had been established in Re Yorkshire Woolcombers[2] *and later confirmed by Spectrum Plus.*[3] *A floating charge is less favourable to the lender because:*

1) The borrower has freedom to deal with the charged assets in the ordinary course of business and has control over them.

2) The value of the charged assets is uncertain until the moment of crystallization which can be too late for the lender to seize the assets and recover its outstanding debt.

3) To be valid, the floating charge must be registered. Failure to register within specified time limits can cause the charge to be invalid and place a creditor in the status of insecurity.

4) Floating charges rank lower in priority to the fixed charge creditors.

5) It can easier be set aside compared to a fixed charge.

Particular attention has been devoted to a company's book debts and whether they can be considered falling under a fix charge or a floating charge. This question has been the topic of significant debate for well over a century until the decision in Spectrum Plus which held that book debts fell under the floating charge and not the fixed charge.[4] *This case established that the courts should look at the parties' rights, obligations and their conduct with regard to the charged assets to decide whether there is a fixed or a floating charge.*

To minimize the disadvantages of a floating charge, several school of thoughts by academics and legal practitioners have been put forward. These have included the radical proposal to abolish the floating charge once and for all, which, I do not agree with. In addition, it has also been proposed to replace the registration system by the notice-filing and to improve the law so as to clarify the distinction between fixed and floating charges. In my view, parties should use the opportunity given by Re Brightlife[5] *to draft a clause in the charge instrument which would specify when and in what circumstances a floating charge becomes a fixed charge. This will enable the parties to not have to wait until the events of default but will help to ensure that the lender is secured and protected prior to the possible hardship.*

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1 Gullifer and Payne, op. cit., p. 244.

2 Re Yorkshire Woolcombers Association Ltd [1903] 2 Ch 284.

3 National Westminster Bank plc v Spectrum Plus Limited and Others [2005] UKHL 41.

4 Ibid.

5 Re Brightlife Ltd [1986] 3 All ER 673.

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Журавель Мар'яна. Механізми забезпечення боргового зобов'язання для кредитора в корпоративному фінансовому праві Великобританії.
Об'єктом дослідження даної статті є два види забезпечення боргового зобов'язання в корпоративному фінансовому праві Великобританії, — це так звані «фіксоване» забезпечення та «плаваюче» забезпечення. Автором розглянуто природу «плаваючого» забезпечення та проведений детальний аналіз відмежувань «фіксованого» від «плаваючого» забезпечень, — питання, що слугувало темою дебатів протягом більше сотні років, та, проте, залишається центральною темою багатьох дискусій на сьогодні. Аналіз викладений на основі ілюстрацій найбільш знакових прецедентів в даній гілці права. Також проаналізовані недоліки «плаваючого» забезпечення для кредитора та розглянуті шляхи щодо їх мінімізації з подальшим викладенням авторської точки зору.
Ключові слова: *«фіксоване» забезпечення, «плаваюче» забезпечення, боргове зобов'язання, заставодавець, заставодержатель, кредитор, боржник, контроль над заставним майном.*

Журавель Марьяна. Механизмы обеспечения долгового обязательства для кредитора в корпоративном финансовом праве Великобритании.
Объектом исследования данной статьи являются два вида обеспечения долгового обязательства в корпоративном финансовом праве Великобритании, — это так называемые «фиксированное» и «плавающее» обеспечение. Автором рассмотрена природа «плавающего» обеспечения и проведен детальный анализ различий между «плавающим» и «фиксированным» обеспечениями, — вопрос, который служил темой дебатов на протяжении более сотни лет и который до сих пор является центральной темой множественных дискуссий. Анализ произведен на основании иллюстраций наиболее знаковых прецедентов в данной отрасли права. Также проанализированы недостатки «плавающего» обеспечения для кредитора и рассмотрены пути касательно их минимизации с дальнейшим изложением авторской точки зрения.
Ключевые слова: *«фиксированное» обеспечение, «плавающее» обеспечение, долговое обязательство, залогодатель, залогодержатель, кредитор, должник, контроль над заложенным имуществом.*