



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER VII

GENERAL

Provisions applying to liquidations and administrations

104 Avoidance of certain floating charges

- (1) Subject to the provisions of this section, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—
 - (a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge;
 - (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company; and
 - (c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) above in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.
- (2) Subject to subsection (3) below, the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created—
 - (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of two years ending with the commencement date;

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- (b) in the case of a charge which is created in favour of any other person, at a time in the period of twelve months ending with that date ; or
 - (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (3) Where a company creates a floating charge at a time mentioned in subsection (2)(b) above and the person in favour of whom the charge is created is not connected with the company, that time shall not be a relevant time for the purposes of this section unless the company—
- (a) is unable to pay its debts within the meaning of section 518 of the 1985 Act at that time; or
 - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.
- (4) For the purposes of subsection (2) above the commencement date is—
- (a) in a case where this section applies by reason of the making of an administration order, the date of the presentation of the petition on which the order was made; and
 - (b) in a case where this section applies by reason of a company's going into liquidation, the date of the commencement of the winding up.
- (5) For the purposes of subsection (1)(a) above the value of any goods or services supplied by way of consideration for a floating charge shall be the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.