

## Priority of charges

412. (1) For the purposes of this section—

(a) “relevant rule of law” means a rule of law that governs the priority of charges created by a company, and for the avoidance of doubt, any enactment governing the priority of such charges is not encompassed by that expression,

(b) the reference in subsection (2) to any priority that one charge, by virtue of a person's not having notice of a matter, enjoys over another charge or charges shall be deemed to include a reference to any priority that an advance made on foot of a charge, by virtue of a person's not having notice of a matter, enjoys over a subsequent charge or charges.

(2) On and from the commencement of this section, any relevant rule of law shall stand modified in the manner specified in subsection (3), but not so as to displace any priority, whether before or after that commencement, that one charge, by virtue of a person's not having notice of a matter, enjoys over another charge or charges.

(3) That modification is that, for the part of the rule that operates by reference to the time of creation of the 2 or more charges concerned, there shall be substituted a part that operates by reference to—

(a) the dates of receipt by the Registrar of the prescribed particulars of the 2 or more charges concerned, or

(b) if the date of receipt by the Registrar of the prescribed particulars of the 2 or more charges is the same, the respective times, on the date concerned, of receipt by the Registrar of those particulars.

(4) References in subsection (3) to the date, or time, of receipt of the prescribed particulars are references to—

(a) if the procedure under subsection (3) of section 409 is complied with in relation to a particular charge, the date, or time, of receipt by the Registrar of the prescribed particulars, in the prescribed form, of the charge, or

(b) if the procedure under subsection (4) of section 409 is complied with in relation to a particular charge, the date, or time, of receipt by the Registrar of the notice, in the prescribed form and containing the prescribed particulars, in relation to the charge under paragraph (a) of that subsection (4).

(5) Subsections (2) and (3) shall not affect any agreement between persons in whose favour charges have been created in relation to the priority that those charges shall, as between them, have.

(6) Subject to subsection (7) in relation to particulars of a charge received by the Registrar pursuant to section 409 (3) or (4), the following provisions apply so far as those particulars consist of particulars

of a negative pledge, any events that crystallise a floating charge or any restrictions on the use of any charged asset (and particulars of any such matter are referred to subsequently in this subsection as “extraneous material”):

(a) the Registrar shall not enter in the register under section 414 particulars of the extraneous material pursuant to that section;

(b) the fact that the Registrar has received the particulars of the extraneous material shall have no legal effect;

but nothing in the foregoing affects the validity of the receipt by the Registrar of the other particulars of the charge.

(7) Subsection (6) does not apply to particulars of a negative pledge included in particulars of a floating charge granted by a company to the Central Bank for the purposes of either providing or securing collateral.

(8) In this section “negative pledge” means any agreement entered into by the company concerned and any other person or persons that—

(a) provides that the company shall not, or shall not otherwise than in specified circumstances—

(i) borrow moneys or otherwise obtain credit from any person other than that person or those persons,

(ii) create or permit to subsist any charge, lien or other encumbrance or any pledge over the whole or any part of the property of the company, or

(iii) alienate or otherwise dispose of in any manner any of the property of the company,

or

(b) contains a prohibition, either generally or in specified circumstances, on the doing by the company of one or more things referred to in one, or more than one, provision of paragraph (a).