



Companies Act 1985

1985 CHAPTER 6

PART XIX

RECEIVERS AND MANAGERS (ENGLAND AND WALES)

488 Extent of this Part

This Part does not apply to receivers under Part XVIII.

489 Disqualification of body corporate from acting as receiver

A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver is liable to a fine.

490 Disqualification of undischarged bankrupt

If a person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he is liable to imprisonment or a fine, or both.

This does not apply to a receiver or manager acting under an appointment made by the court.

491 Power for court to appoint official receiver

Where application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be appointed.

492 Receivers and managers appointed out of court

- (1) A receiver or manager of the property of a company appointed under powers contained in an instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions.

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- (2) On such an application, the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as it thinks just.
- (3) A receiver or manager so appointed is, to the same extent as if he had been appointed by order of a court—
 - (a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides), and
 - (b) entitled in respect of that liability to indemnity out of the assets;but this subsection does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

493 Notification that receiver or manager appointed

- (1) When a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.
- (2) If default is made in complying with this section, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

494 Court's power to fix remuneration of receiver or manager

- (1) The court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.
- (2) The court's power under subsection (1). where no previous order has been made with respect thereto under the subsection—
 - (a) extends to fixing the remuneration for any period before the making of the order or the application for it, and
 - (b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and
 - (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

But the power conferred by paragraph (c) shall not be exercised as respects any period before the making of the application for the order under this section, unless in the court's opinion there are special circumstances making it proper for the power to be exercised.

- (3) The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1).

495 Information to be given by and to receiver on appointment

- (1) The following applies where, in the case of a company registered in England and Wales, a receiver or manager of the whole (or substantially the whole) of the company's property is appointed on behalf of the holders of any debentures of the company secured by a floating charge.

In this and the following two sections, he is referred to as " the receiver ".

- (2) Subject to the following provisions of this section, and to sections 496 and 497—
- (a) the receiver shall forthwith send to the company notice of his appointment in the prescribed form, and
 - (b) there shall within 14 days after receipt of the notice (or such longer period as may be allowed by the court or by the receiver) be made out and submitted to the receiver in accordance with section 496 a statement in the prescribed form as to the affairs of the company.
- (3) The receiver shall, within 2 months after receipt of the statement, send—
- (a) to the registrar of companies and to the court, a copy of the statement and of any comments he sees fit to make on it and, in the case of the registrar of companies, also a summary of the statement and of his comments (if any) on it; and
 - (b) to the company, a copy of any such comments as above mentioned or, if he does not see fit to make any comments, a notice to that effect; and
 - (c) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the summary.
- (4) If the receiver is appointed under powers contained in an instrument, subsections (2) and (3) have effect with the omission of references to the court; and in any other case references to the court are to the court by which the receiver was appointed.
- (5) This section does not apply in relation to the appointment of a receiver or manager to act—
- (a) with an existing receiver or manager, or
 - (b) in place of a receiver or manager dying or ceasing to act,
- except that, where it applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in subsection (2)(b) and (3) to the receiver include (subject to the next subsection) his successor and any continuing receiver or manager.
- (6) If the company is being wound up, this section and section 496 apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (7) If the receiver makes default in complying with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

496 Company's statement of affairs

- (1) The company's statement of affairs required by section 495 to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment—
- (a) the particulars of the company's assets, debts and liabilities,
 - (b) the names, residences and occupations of its creditors.

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- (c) the securities held by them respectively,
 - (d) the dates when the securities were respectively given, and
 - (e) such further or other information as may be prescribed.
- (2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons mentioned in the next subsection as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement.
- (3) The persons referred to above are those—
- (a) who are or have been officers of the company,
 - (b) who have taken part in the company's formation at any time within one year before the date of the receiver's appointment,
 - (c) who are in the company's employment, or have been in its employment during that year and are in the receiver's opinion capable of giving the information required,
 - (d) who are or have been during that year officers of or in the employment of a company which is, or within that year was, an officer of the company to which the statement relates.
- (4) A person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.
- (5) Where the receiver is appointed under powers contained in an instrument, this section applies with the substitution for references to the court of references to the Secretary of State, and for references to an affidavit of references to a statutory declaration ; and in any other case references to the court are to the court by which the receiver was appointed.
- (6) If a person without reasonable excuse makes default in complying with the requirements of this section, he is liable to a fine and, for continued contravention, to a daily default fine.
- (7) References in this section to the receiver's successor include a continuing receiver or manager.

497 Subsequent returns by receiver

- (1) In the case mentioned in section 495(1), the receiver shall—
- (a) within 2 months (or such longer period as the court may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 12 months, and
 - (b) within 2 months (or such longer period as the court may allow) after he ceases to act as receiver or manager of the company's property,
- send the requisite accounts of his receipts and payments to the registrar of companies, to any trustees for the debenture holders on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders.
- (2) The requisite accounts shall be an abstract in the prescribed form showing—
- (a) receipts and payments during the relevant period of 12 months, or

- (b) where the receiver ceases to act, receipts and payments during the period from the end of the period of 12 months to which the last preceding abstract related (or, if no preceding abstract has been sent under this section, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.
- (3) Nothing in section 495(5) is to be taken as limiting the meaning of the expression "the receiver" where used in, or in relation to, subsection (1) or (2) above.
- (4) Where the receiver is appointed under powers contained in an instrument, this section has effect with the substitution of the Secretary of State for the court; and in any other case references to the court are to the court by which the receiver was appointed.
- (5) This section applies, where the company is being wound up, notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (6) This section does not prejudice the receiver's duty to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from this section.
- (7) If the receiver makes default in complying with the requirements of this section, he is liable to a fine and, for continued contravention, to a daily default fine.

498 Receivership accounts to be delivered to registrar

- (1) Except where section 497 applies, every receiver or manager of a company's property who has been appointed under powers contained in an instrument shall deliver to the registrar of companies for registration the requisite accounts of his receipts and payments.
- (2) The accounts shall be delivered within one month (or such longer period as the registrar may allow) after the expiration of 6 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.
- (3) The requisite accounts shall be an abstract in the prescribed form showing—
 - (a) receipts and payments during the relevant period of 6 months, or
 - (b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this section, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.
- (4) A receiver or manager who makes default in complying with this section is liable to a fine and, for continued contravention, to a daily default fine.

499 Enforcement of duty of receivers to make returns

- (1) If a receiver or manager of a company's property—
 - (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law

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required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, or

- (b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.

- (2) In the case of the default mentioned in subsection (1)(a), application to the court may be made by any member or creditor of the company or by the registrar of companies; and in the case of the default mentioned in subsection (1)(b), the application shall be made by the liquidator.

In either case the court's order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

- (3) Nothing in this section prejudices the operation of any enactment imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

500 Construction of references to receivers and managers

It is hereby declared that, except where the context otherwise requires—

- (a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver of it, includes a reference to a receiver or manager, or (as the case may be) to a receiver of part only of that property and to a receiver only of the income arising from the property or from part of it, and
- (b) any reference in this Act to the appointment of a receiver or manager under powers contained in an instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.