



# Companies Act 1985

## 1985 CHAPTER 6

### PART XVIII

#### FLOATING CHARGES AND RECEIVERS (SCOTLAND)

#### CHAPTER I

#### FLOATING CHARGES

**Modifications etc. (not altering text)**

- C1** Pt. 18 Ch. 1 applied (with modifications) (26.3.2015) by [The Financial Services \(Banking Reform\) Act 2013 \(Commencement \(No. 8\) and Consequential Provisions\) Order 2015 \(S.I. 2015/428\)](#), art. 4, [Sch. 1](#) (with art. 5) (as amended by S.I. 2016/679, art. 7(a))

**462 Power of incorporated company to create floating charge.**

(1) It is competent under the law of Scotland for an incorporated company (whether a company within the meaning of this Act or not), for the purpose of securing any debt or other obligation (including a cautionary obligation) incurred or to be incurred by, or binding upon, the company or any other person, to create in favour of the creditor in the debt or obligation a charge, in this Part referred to as a floating charge, over all or any part of the property (including uncalled capital) which may from time to time be comprised in its property and undertaking.

(2) .....<sup>F1</sup>

(4) References in this Part to the instrument by which a floating charge was created are, in the case of a floating charge created by words in a bond or other written acknowledgment, references to the bond or, as the case may be, the other written acknowledgment.

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- (5) Subject to this Act, a floating charge has effect in accordance with this Part <sup>F2</sup>and Part III of the Insolvency Act 1986] in relation to any heritable property in Scotland to which it relates, notwithstanding that the instrument creating it is not recorded in the Register of Sasines or, as appropriate, registered in accordance with the <sup>M1</sup>Land Registration (Scotland) Act 1979.

#### Textual Amendments

- F1** S. 462(2) substituted for S. 462(2)(3) by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 130(7), **Sch. 17 para. 8** and repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 27\)](#), s. 74(1)(2), **Sch. 8 para. 33(6)**, **Sch. 9**
- F2** Words inserted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**

#### Modifications etc. (not altering text)

- C2** S. 462 applied (with modifications) (6.4.2001) by [S.S.I. 2001/128](#), reg. 3, **Sch. 1**

#### Marginal Citations

- M1** 1979 c. 33.

### 463 Effect of floating charge on winding up.

- (1) <sup>F3</sup>Where a company goes into liquidation within the meaning of section 247(2) of the Insolvency Act 1986,] a floating charge created by the company attaches to the property then comprised in the company's property and undertaking or, as the case may be, in part of that property and undertaking, but does so subject to the rights of any person who—
- (a) has effectually executed diligence on the property or any part of it; or
  - (b) holds a fixed security over the property or any part of it ranking in priority to the floating charge; or
  - (c) holds over the property or any part of it another floating charge so ranking.
- (2) The provisions of <sup>F4</sup>Part IV of the Insolvency Act (except section 185)] have effect in relation to a floating charge, subject to subsection (1), as if the charge were a fixed security over the property to which it has attached in respect of the principal of the debt or obligation to which it relates and any interest due or to become due thereon.
- <sup>F5</sup>(3) Nothing in this section derogates from the provisions of sections 53(7) and 54(6) of the Insolvency Act (attachment of floating charge on appointment of receiver), or prejudices the operation of sections 175 and 176 of that Act (payment of preferential debts in winding up)].
- (4) <sup>F6</sup>. . . interest accrues, in respect of a floating charge which after 16th November 1972 attaches to the property of the company, until payment of the sum due under the charge is made.

#### Textual Amendments

- F3** Words substituted (3.7.1995) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 140(1)**, 213(2); [S.I. 1995/1352](#), **art. 3(a)** (with transitional provisions and savings in [art. 4](#))
- F4** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**
- F5** S. 463(3) substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**

*Status: Point in time view as at 05/11/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1985, Chapter I. (See end of Document for details)*

**F6** Words repealed by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 438, [Sch. 12](#)

**Modifications etc. (not altering text)**

**C3** S. 463 applied (with modifications) (6.4.2001) by [S.S.I. 2001/128](#), reg. 3, [Sch. 1](#)

#### **464 Ranking of floating charges.**

(1) Subject to subsection (2), the instrument creating a floating charge over all or any part of the company's property under section 462 may contain—

- (a) provisions prohibiting or restricting the creation of any fixed security or any other floating charge having priority over, or ranking *pari passu* with, the floating charge; or
- (b) [<sup>F7</sup>with the consent of the holder of any subsisting floating charge or fixed security which would be adversely affected,] provisions regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over that property or any part of it.

[<sup>F8</sup>(1A) Where an instrument creating a floating charge contains any such provision as is mentioned in subsection (1)(a), that provision shall be effective to confer priority on the floating charge over any fixed security or floating charge created after the date of the instrument.]

(2) Where all or any part of the property of a company is subject both to a floating charge and to a fixed security arising by operation of law, the fixed security has priority over the floating charge.

[<sup>F9</sup>(3) The order of ranking of the floating charge with any other subsisting or future floating charges or fixed securities over all or any part of the company's property is determined in accordance with the provisions of subsections (4) and (5) except where it is determined in accordance with any provision such as is mentioned in paragraph (a) or (b) of subsection (1).]

(4) Subject to the provisions of this section—

- (a) a fixed security, the right to which has been constituted as a real right before a floating charge has attached to all or any part of the property of the company, has priority of ranking over the floating charge;
- (b) floating charges rank with one another according to the time of registration in accordance with Chapter II of Part XII;
- (c) floating charges which have been received by the registrar for registration by the same postal delivery rank with one another equally.

(5) Where the holder of a floating charge over all or any part of the company's property which has been registered in accordance with Chapter II of Part XII has received intimation in writing of the subsequent registration in accordance with that Chapter of another floating charge over the same property or any part thereof, the preference in ranking of the first-mentioned floating charge is restricted to security for—

- (a) the holder's present advances;
- (b) future advances which he may be required to make under the instrument creating the floating charge or under any ancillary document;
- (c) interest due or to become due on all such advances; <sup>F10</sup> . . .
- (d) any expenses or outlays which may reasonably be incurred by the holder [<sup>F11</sup>; and

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- (e) (in the case of a floating charge to secure a contingent liability other than a liability arising under any further advances made from time to time) the maximum sum to which that contingent liability is capable of amounting whether or not it is contractually limited.]
- (6) This section is subject to [F12Part XII and to][F13sections 175 and 176 of the Insolvency Act].

#### Textual Amendments

- F7** Words inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 140(2)(3), 213(2); S.I. 1995/1352, art. 3(a) (with transitional provisions and savings in art. 5)
- F8** S. 464(1A) inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 140(2)(4), 213(2); S.I. 1995/1352, art. 3(a) (with transitional provisions and savings in art. 6)
- F9** S. 464(3) substituted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 140(2)(5), 213(2); S.I. 1995/1352, art. 3(a) (with transitional provisions and savings in art. 7)
- F10** Word repealed (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), Sch. 24; S.I. 1995/1352, art. 3(a)(c)
- F11** S. 464(5)(e) and the word “and” immediately preceding it inserted (3.7.1995) by Companies Act 1989 (c. 40, SIF 27), s. 140(6); S.I. 1995/1352, art. 3(a) (with transitional provisions and savings in art. 8)
- F12** Words inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 140(2)(7), 213(2)
- F13** Words substituted by virtue of Insolvency Act 1985 (c. 65, SIF 27), s. 109, Sch. 6 para. 19 and Insolvency Act 1986 (c.45, SIF 66), s. 439(1), Sch. 13 Pt. I

#### Modifications etc. (not altering text)

- C4** S. 464 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I
- C5** S. 464(1A) restricted (20.5.1995) by S.I. 1995/1352, art. 6
- C6** S. 464(3) restricted (20.5.1995) by S.I. 1995/1352, art. 7

### 465 Continued effect of certain charges validated by Act of 1972.

- (1) Any floating charge which—
- (a) purported to subsist as a floating charge on 17th November 1972, and
  - (b) if it had been created on or after that date, would have been validly created by virtue of the <sup>M2</sup>Companies (Floating Charges and Receivers) (Scotland) Act 1972,
- is deemed to have subsisted as a valid floating charge as from the date of its creation.
- (2) Any provision which—
- (a) is contained in an instrument creating a floating charge or in any ancillary document executed prior to, and still subsisting at, the commencement of that Act,
  - (b) relates to the ranking of charges, and
  - (c) if it had been made after the commencement of that Act, would have been a valid provision,
- is deemed to have been a valid provision as from the date of its making.

#### Marginal Citations

- M2** 1972 c. 67.

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#### **466 Alteration of floating charges.**

- (1) The instrument creating a floating charge under section 462 or any ancillary document may be altered by the execution of an instrument of alteration by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
- (2) [<sup>F14</sup>Without prejudice to any enactment or rule of law regarding the execution of documents,] such an instrument of alteration is validly executed if it is executed—
  - <sup>F15</sup>(a) .....
  - (b) where trustees for debenture-holders are acting under and in accordance with a trust deed, by those trustees [<sup>F16</sup>; or]
  - (c) where, in the case of a series of secured debentures, no such trustees are acting, by or on behalf of—
    - (i) a majority in nominal value of those present or represented by proxy and voting at a meeting of debenture-holders at which the holders of at least one-third in nominal value of the outstanding debentures of the series are present or so represented; or
    - (ii) where no such meeting is held, the holders of at least one-half in nominal value of the outstanding debentures of the series; <sup>F17</sup> . . .
- (3) Section 464 applies to an instrument of alteration under this section as it applies to an instrument creating a floating charge.
- [<sup>F18</sup>(4) [<sup>F19</sup>Subsection (4A) applies to an alteration of a floating charge, where the alteration is one which]—
  - (a) prohibits or restricts the creation of any fixed security or any other floating charge having priority over, or ranking *pari passu* with, the floating charge; or
  - (b) varies, or otherwise regulates the order of, the ranking of the floating charge in relation to fixed securities or to other floating charges; or
  - (c) releases property from the floating charge; or
  - (d) increases the amount secured by the floating charge.]
- [<sup>F20</sup>(4A) Every alteration to a floating charge created by a company is, so far as any security on the company's property or any part of it is conferred by the alteration, void against the liquidator or administrator and any creditor of the company, unless the documents referred to in subsection (4B) are delivered to the registrar for registration by the company or any person interested in the charge before the end of the relevant period allowed for delivery.
- (4B) The documents referred to in subsection (4A) are—
  - (a) a certified copy of the instrument of alteration, and
  - (b) a statement of particulars including—
    - (i) the registered name and number of the company;
    - (ii) the date of creation of the charge;
    - (iii) a description of the instrument (if any) by which the charge was created or evidenced;
    - (iv) short particulars of the property or undertaking charged as set out when the charge was registered;
    - (v) date(s) of execution of the instrument of alteration;
    - (vi) names and address(es) of the persons who have executed the instrument of alteration.

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- (4C) In subsection (4A) “the relevant period allowed for delivery” is—
- (a) the period of 21 days beginning with the day after the date of execution of the instrument of alteration, or
  - (b) if an order under section 859F(3) of the Companies Act 2006 (as applied by subsection (4E)) has been made, the period allowed by the order.
- (4D) Subsection (4A) is without prejudice to any contract or obligation for repayment of the money secured by the alteration to the charge; and when an alteration becomes void under subsection (4A) the money secured by it immediately becomes payable.
- (4E) Sections 859F, 859G, 859I, 859M and 859N of the Companies Act 2006 apply to an alteration to a floating charge to which subsection (4A) applies as they apply to a charge.
- (4F) As applied by subsection (4E), those sections apply as if—
- (a) references to the documents required or delivered under section 859A or 859B were to the documents referred to in subsection (4B);
  - (b) references to the period allowed for delivery under the section concerned were to the period referred to in subsection (4C)(a);
  - (c) references to the delivery of a certified copy of an instrument to the registrar for the purposes of Chapter A1 of Part 25 of the Companies Act 2006 were to the delivery of a certified copy of an instrument of alteration to the registrar for the purposes of this section;
  - (d) references to registration in accordance with a provision of Chapter A1 of Part 25 of the Companies Act 2006 were to registration in accordance with this section;
  - (e) references to a section 859D statement of particulars were to the statement of particulars referred to in subsection (4B)(b);
  - (f) references to registration under section 859A or 859B were to registration under this section;
  - (g) references to a statement or notice delivered to the registrar in accordance with Chapter A1 of Part 25 of the Companies Act 2006 were to a statement delivered to the registrar in accordance with subsection (4A).]
- <sup>F21</sup>(5) .....
- (6) Any reference (however expressed) in any enactment, including this Act, to a floating charge is, for the purposes of this section and unless the context otherwise requires, to be construed as including a reference to the floating charge as altered by an [<sup>F22</sup>alteration][<sup>F23</sup>falling under subsection (4) of this section].

#### Textual Amendments

- F14** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 9\(a\)](#)
- F15** S. 466(2)(1.10.1990) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 212, 213(2), [Sch. 17 para. 9\(b\)](#), [Sch. 24](#)
- F16** Word inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 213(2), [Sch. 17 para. 9\(c\)](#)
- F17** S. 466(2)(d) and the word “or” preceding it repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 130(7), 212, 213(2), [Sch. 17 para. 9\(d\)](#), [Sch. 24](#)
- F18** S. 466(4)(5) repealed (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 140(8), 212, 213(2), 215(2), [Sch. 24](#)

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- F19** Words in s. 466(4) substituted (6.4.2013) by The Companies Act 2006 (Amendment of Part 25) Regulations 2013 (S.I. 2013/600), reg. 1, **Sch. 2 para. 1(2)** (with reg. 6)
- F20** S. 466(4A)-(4F) inserted (6.4.2013) by The Companies Act 2006 (Amendment of Part 25) Regulations 2013 (S.I. 2013/600), reg. 1, **Sch. 2 para. 1(3)** (with reg. 6)
- F21** S. 466(5) omitted (6.4.2013) by virtue of The Companies Act 2006 (Amendment of Part 25) Regulations 2013 (S.I. 2013/600), reg. 1, **Sch. 2 para. 1(4)** (with reg. 6)
- F22** Words in s. 466(6) substituted (6.4.2013) by The Companies Act 2006 (Amendment of Part 25) Regulations 2013 (S.I. 2013/600), reg. 1, **Sch. 2 para. 1(5)** (with reg. 6)
- F23** Words repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 140(8), 212, 213(2), 215(2), **Sch. 24**

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**Modifications etc. (not altering text)**

- C7** S. 466 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**
- C8** S. 466(1)-(3)(6) applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 3, **Sch. 1**

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1985, Chapter I.