



# Companies Act 1985

## 1985 CHAPTER 6

### PART XVIII

#### FLOATING CHARGES AND RECEIVERS (SCOTLAND)

### CHAPTER I

#### FLOATING CHARGES

#### **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) A floating charge may be created, in the case of a company which the Court of Session has jurisdiction to wind up, only by the execution, under the seal of the company, of an instrument or bond or other written acknowledgment of debt or obligation which purports to create such a charge.
- (3) Execution in accordance with this section includes execution by an attorney authorised for such purpose by the company by writing under its common seal; and any such execution on behalf of the company binds the company.
- (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 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 Land Registration (Scotland) Act 1979.

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

- (1) On the commencement of the winding up of a company, 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 Part XX (except section 623(4)) 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.
- (3) Nothing in this section—
- (a) prejudices the operation of section 614(2);
  - (b) derogates from the provisions of sections 469(7) and 470(6) in this Part.
- (4) Subject to section 617, 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.

#### **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) 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.
- (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.
- (3) Where 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 not regulated by provisions contained in the instrument creating the floating charge, the order of ranking is determined in accordance with the following provisions of this section.
- (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; and
  - (d) any expenses or outlays which may reasonably be incurred by the holder.
- (6) This section is subject to section 614(2) (preferential debts in winding up).

#### **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 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.

#### **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) Such an instrument of alteration is validly executed if it is executed—
- (a) in the case of a company, under its common seal or by an attorney authorised for such purpose by the company by a writing under its common seal;
  - (b) where trustees for debenture-holders are acting under and in accordance with a trust deed, by those trustees;

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- (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; or
  - (d) in such manner as may be provided for in the instrument creating the floating charge or any ancillary document.
- (3) Section 464 applies to an instrument of alteration under this section as it applies to an instrument creating a floating charge.
- (4) Subject to the next subsection, section 410(2) and (3) and section 420 apply to an instrument of alteration under this section 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.
- (5) Section 410(2) and (3) and section 420 apply to an instrument of alteration falling under subsection (4) of this section as if references in the said sections to a charge were references to an alteration to a floating charge, and as if in section 410(2) and (3)—
- (a) references to the creation of a charge were references to the execution of such alteration ; and
  - (b) for the words from the beginning of subsection (2) to the word " applies" there were substituted the words " Every alteration to a floating charge created by a company ".
- (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 instrument of alteration falling under subsection (4) of this section.

## CHAPTER II

### RECEIVERS

#### **467 Power to appoint receiver**

- (1) It is competent under the law of Scotland for the holder of a floating charge over all or any part of the property (including uncalled capital), which may from time to time be comprised in the property and undertaking of an incorporated company (whether a company within the meaning of this Act or not) which the Court of Session has jurisdiction to wind up, to appoint a receiver of such part of the property of the company as is subject to the charge.

- (2) It is competent under the law of Scotland for the court, on the application of the holder of such a floating charge, to appoint a receiver of such part of the property of the company as is subject to the charge.
- (3) The following are disqualified from being appointed as receiver—
  - (a) a body corporate;
  - (b) an undischarged bankrupt; and
  - (c) a firm according to the law of Scotland.
- (4) A body corporate or a firm according to the law of Scotland which acts as a receiver is liable to a fine.
- (5) An undischarged bankrupt who so acts is liable to imprisonment or a fine, or both.
- (6) In this section, " receiver" includes joint receivers.

#### **468    Circumstances justifying appointment**

- (1) A receiver may be appointed under section 467(1) by the holder of the floating charge on the occurrence of any event which, by the provisions of the instrument creating the charge, entitles the holder of the charge to make that appointment and, in so far as not otherwise provided for by the instrument, on the occurrence of any of the following events, namely—
  - (a) the expiry of a period of 21 days after the making of a demand for payment of the whole or any part of the principal sum secured by the charge, without payment having been made;
  - (b) the expiry of a period of two months during the whole of which interest due and payable under the charge has been in arrears;
  - (c) the making of an order or the passing of a resolution to wind up the company ;
  - (d) the appointment of a receiver by virtue of any other floating charge created by the company.
- (2) A receiver may be appointed by the court under section 467(2) on the occurrence of any event which, by the provisions of the instrument creating the floating charge, entitles the holder of the charge to make that appointment and, in so far as not otherwise provided for by the instrument, on the occurrence of any of the following events, namely—
  - (a) where the court, on the application of the holder of the charge, pronounces itself satisfied that the position of the holder of the charge is likely to be prejudiced if no such appointment is made;
  - (b) any of the events referred to in paragraphs (a) to (c) of subsection (1) above.

#### **469    Mode of appointment by holder of charge**

- (1) The appointment of a receiver by the holder of the floating charge under section 467(1) shall be by means of a validly executed instrument in writing (referred to as the " instrument of appointment"), a copy (certified in the prescribed manner to be a correct copy) whereof shall be delivered by or on behalf of the person making the appointment to the registrar of companies for registration within 7 days of its execution and shall be accompanied by a notice in the prescribed form.

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- (2) If any person without reasonable excuse makes default in complying with the requirements of subsection (1), he is liable to a fine and, for continued contravention, to a daily default fine.
- (3) The instrument of appointment is validly executed—
  - (a) by a company, if it is executed in accordance with the provisions of section 36 of this Act as if it were a contract; and
  - (b) by any other person, if it is executed in the manner required or permitted by the law of Scotland in the case of an attested deed.
- (4) The instrument may be executed on behalf of the holder of the floating charge by virtue of which the receiver is to be appointed—
  - (a) by any person duly authorised in writing by the holder to execute the instrument; and
  - (b) in the case of an appointment of a receiver by the holders of a series of secured debentures, by any person authorised by resolution of the debenture-holders to execute the instrument.
- (5) On receipt of the certified copy of the instrument of appointment in accordance with subsection (1) of this section, the registrar shall, on payment of the prescribed fee, enter the particulars of the appointment in the register of charges.
- (6) The receiver is to be regarded as having been appointed on the date of the execution of the instrument of his appointment.
- (7) On the appointment of a receiver under this section, the floating charge by virtue of which he was appointed attaches to the property then subject to the charge; and such attachment has effect as if the charge was a fixed security over the property to which it has attached.

#### **470 Appointment by court**

- (1) Application for the appointment of a receiver by the court under section 467(2) shall be by petition to the court, which shall be served on the company.
- (2) On such application, the court shall, if it thinks fit, issue an interlocutor making the appointment of the receiver on such terms as to caution as it may think fit.
- (3) A copy (certified by the clerk of the court to be a correct copy) of the court's interlocutor making the appointment shall be delivered by or on behalf of the petitioner to the registrar of companies for registration, accompanied by a notice in the prescribed form, within 7 days of the date of the interlocutor or such longer period as the court may allow.

If any person without reasonable excuse makes default in complying with the requirements of this subsection he is liable to a fine and, for continued contravention, to a daily default fine.

- (4) On receipt of the certified copy interlocutor in accordance with subsection (3), and on receipt of a certificate by the appropriate officer of the court that caution as ordered by the court has been found, the registrar shall, on payment of the prescribed fee, enter the particulars of the appointment in the register of charges.
- (5) The receiver is to be regarded as having been appointed on the date of his being appointed by the court.

- (6) On the appointment of a receiver under this section, the floating charge by virtue of which he was appointed attaches to the property then subject to the charge; and such attachment has effect as if the charge were a fixed security over the property to which it has attached.
- (7) In making rules of court for the purposes of this section, the Court of Session shall have regard to the need for special provision for cases which appear to the court to require to be dealt with as a matter of urgency.

#### **471 Powers of receiver**

- (1) Subject to subsection (2) below, a receiver has in relation to such part of the property of the company as is attached by the floating charge by virtue of which he was appointed, the powers, if any, given to him by the instrument creating that charge and, in addition, he has under this Part the following powers as respects that property, in so far as these are not inconsistent with any provision contained in that instrument, namely—
- (a) power to take possession of, collect and get in the property from the company or a liquidator thereof or any other person, and for that purpose, to take such proceedings as may seem to him expedient;
  - (b) power to sell, feu, hire out or otherwise dispose of the property by public roup or private bargain and with or without advertisement;
  - (c) power to borrow money and grant security therefor over the property;
  - (d) power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions;
  - (e) power to apply to the court for directions in connection with the performance of his functions;
  - (f) power to bring or defend any action or other legal proceedings in the name and on behalf of the company;
  - (g) power to refer to arbitration all questions affecting the company;
  - (h) power to effect and maintain insurances in respect of the business and property of the company;
  - (i) power to use the company's seal;
  - (j) power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document;
  - (k) power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company ;
  - (l) power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and discharge servants;
  - (m) power to have carried out to the best advantage any work on the property of the company and in general to do all such other things as may be necessary for the realisation of the property ;
  - (n) power to make any payment which is necessary or incidental to the performance of his functions ;
  - (o) power to carry on the business of the company so far as he thinks it desirable to do so;
  - (p) power to grant any lease of the property, and to input and output tenants, and to take on lease any property required or convenient for the business of the company;

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- (q) power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person or company indebted to the company and to receive dividends, and to accede to trust deeds for creditors of any such person ;
  - (r) power to present or defend a petition for the winding up of the company ; and
  - (s) power to do all other things incidental to the exercise of the powers mentioned in this subsection.
- (2) Subsection (1) applies—
- (a) subject to the rights of any person who has effectually executed diligence on all or any part of the property of the company prior to the appointment of the receiver; and
  - (b) subject to the rights of any person who holds over all or any part of the property of the company a fixed security or floating charge having priority over, or ranking *pari passu* with, the floating charge by virtue of which the receiver was appointed.
- (3) A person transacting with a receiver shall not be concerned to inquire whether any event has happened to authorise the receiver to act.

#### **472 Precedence among receivers**

- (1) Where there are two or more floating charges subsisting over all or any part of the property of the company, a receiver may be appointed under this Chapter by virtue of each such charge, but a receiver appointed by, or on the application of, the holder of a floating charge having priority of ranking over any other floating charge by virtue of which a receiver has been appointed has the powers given to a receiver by section 471 to the exclusion of any other receiver.
- (2) Where two or more floating charges rank with one another equally, and two or more receivers have been appointed by virtue of such charges, the receivers so appointed are deemed to have been appointed as joint receivers.
- (3) Receivers appointed, or deemed to have been appointed, as joint receivers shall act jointly unless the instrument of appointment or respective instruments of appointment otherwise provide.
- (4) Subject to subsection (5) below, the powers of a receiver appointed by, or on the application of, the holder of a floating charge are suspended by, and as from the date of, the appointment of a receiver by, or on the application of, the holder of a floating charge having priority of ranking over that charge to such extent as may be necessary to enable the receiver second mentioned to exercise his powers under section 471 ; and any powers so suspended take effect again when the floating charge having priority of ranking ceases to attach to the property then subject to the charge, whether such cessation is by virtue of section 478(6) or otherwise.
- (5) The suspension of the powers of a receiver under subsection (4) does not have the effect of requiring him to release any part of the property (including any letters or documents) of the company from his control until he receives from the receiver superseding him a valid indemnity (subject to the limit of the value of such part of the property of the company as is subject to the charge by virtue of which he was appointed) in respect of any expenses, charges and liabilities he may have incurred in the performance of his functions as receiver.



- (6) The suspension of the powers of a receiver under subsection (4) does not cause the floating charge by virtue of which he was appointed to cease to attach to the property to which it attached by virtue of section 469(7) or 470(6).
- (7) Nothing in this section prevents the same receiver being appointed by virtue of two or more floating charges.

#### **473 Agency and liability of receiver for contracts. . i Section**

- (1) A receiver is deemed to be the agent of the company in relation to such property of the company as is attached by the floating charge by virtue of which he was appointed.
- (2) Subject to subsection (1), a receiver (including a receiver whose powers are subsequently suspended under section 472) is personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides.
- (3) A receiver who is personally liable by virtue of subsection (2) is entitled to be indemnified out of the property in respect of which he was appointed.
- (4) Any contract entered into by or on behalf of the company prior to the appointment of a receiver continues in force (subject to its terms) notwithstanding that appointment, but the receiver does not by virtue only of his appointment incur any personal liability on any such contract.
- (5) Any contract entered into by a receiver in the performance of his functions continues in force (subject to its terms) although the powers of the receiver are subsequently suspended under section 472.

#### **474 Remuneration of receiver**

- (1) The remuneration to be paid to a receiver is to be determined by agreement between the receiver and the holder of the floating charge by virtue of which he was appointed.
- (2) Where the remuneration to be paid to the receiver has not been determined under subsection (1) or where it has been so determined but is disputed by any of the persons mentioned in paragraphs (a) to (d), it may be fixed instead by the Auditor of the Court of Session on application made to him by—
  - (a) the receiver ;
  - (b) the holder of any floating charge or fixed security over all or any part of the property of the company ;
  - (c) the company; or
  - (d) the liquidator of the company.
- (3) Application to the Auditor of the Court of Session under subsection (2) shall be made in writing not later than one month after the sending of the abstract of receipts and payments of the receiver mentioned below in this Chapter which discloses the remuneration, if any, payable to the receiver.
- (4) Where the receiver has been paid or has retained for his remuneration for any period before the remuneration has been fixed by the Auditor of the Court of Session under subsection (2) any amount in excess of the remuneration so fixed for that period, the receiver or his personal representatives shall account for the excess.

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#### **475 Priority of debts**

- (1) Where a receiver is appointed and the company is not at the time of the appointment in course of being wound up, the debts which fall under subsection (2) of this section shall be paid out of any assets coming to the hands of the receiver in priority to any claim for principal or interest by the holder of the floating charge by virtue of which the receiver was appointed.
- (2) Debts falling under this subsection are debts which satisfy the conditions of this subsection, that is to say, they are debts—
  - (a) which in every winding up are, under the provisions of Part XX relating to preferential payments, to be paid in priority to all other debts ; and
  - (b) which, by the end of a period of six months after advertisement by the receiver for claims in the Edinburgh Gazette and in a newspaper circulating in the district where the company carries on business, either—
    - (i) have been intimated to him ; or
    - (ii) have become known to him.
- (3) In the application of Part XX, section 614 and Schedule 19 are to be read as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver.
- (4) The periods of time mentioned in Schedule 19 are to be reckoned from the date of the appointment of the receiver under section 469(6) or 470(5).
- (5) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of ordinary creditors.

#### **476 Distribution of moneys**

- (1) Subject to section 477, and to the rights of any of the following categories of persons, namely—
  - (a) the holder of any fixed security which is over property subject to the floating charge and which ranks prior to, or *pari passu* with, the floating charge ;
  - (b) all persons who have effectually executed diligence on any part of the property of the company which is subject to the charge by virtue of which the receiver was appointed ;
  - (c) creditors in respect of all liabilities, charges and expenses incurred by or on behalf of the receiver;
  - (d) the receiver in respect of his liabilities, expenses and remuneration; and
  - (e) the preferential creditors entitled to payment under section 475,the receiver shall pay monies received by him to the holder of the floating charge by virtue of which the receiver was appointed in or towards satisfaction of the debt secured by the floating charge.
- (2) Any balance of monies remaining after the provisions of subsection (1) of this section and section 477 have been satisfied shall be paid in accordance with their respective rights and interests to the following persons, as the case may require, namely—
  - (a) any other receiver;

- (b) the holder of a fixed security which is over property subject to the floating charge;
  - (c) the company or its liquidator, as the case may be.
- (3) Where any question arises as to the person entitled to a payment under this section, or where a receipt or a discharge of a security cannot be obtained in respect of any such payment, the receiver shall consign the amount of such payment in any joint stock bank of issue in Scotland in name of the Accountant of Court for behoof of the person or persons entitled thereto.

#### **477 Disposal of interest in property**

- (1) Where the receiver sells or disposes, or is desirous of selling or disposing, of any property or interest in property of the company which is subject to the floating charge by virtue of which the receiver was appointed and which is—
- (a) subject to any security or interest of, or burden or encumbrance in favour of, a creditor the ranking of which is prior to, *pari passu* with, or postponed to the floating charge; or
  - (b) property or an interest in property affected or attached by effectual diligence executed by any person ;

and the receiver is unable to obtain the consent of such creditor or, as the case may be, such person to such a sale or disposal, the receiver may apply to the court for authority to sell or dispose of the property or interest in property free of such security, interest, burden, encumbrance or diligence.

- (2) On such an application, the court may, if it thinks fit, authorise the sale or disposal of the property or interest in question free of such security, interest, burden, encumbrance or diligence, and such authorisation may be on such terms or conditions as the court thinks fit:

But that authorisation shall not be given where a fixed security over the property or interest in question which ranks prior to the floating charge has not been met or provided for in full.

- (3) Where any sale or disposal is effected in accordance with the authorisation of the court under subsection (2) of this section, the receiver shall grant to the purchaser or donee an appropriate document of transfer or conveyance of the property or interest in question, and that document has the effect, or, where recording, intimation or registration of that document is a legal requirement for completion of title to the property or interest, then that recording, intimation or registration, as the case may be, has the effect, of—
- (a) disencumbering the property or interest of the security, interest, burden or encumbrance affecting it; and
  - (b) freeing the property or interest from the diligence executed upon it.
- (4) Nothing in this section prejudices the right of any creditor of the company to rank for his debt in the winding up of the company.

#### **478 Cessation of appointment of receiver**

- (1) A receiver appointed by the holder of a floating charge under section 467(1) may resign on giving one month's notice thereof to—

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- (a) the holders of floating charges over all or any part of the property of the company ;
  - (b) the company or its liquidator; and
  - (c) the holders of any fixed security over property of the company which is subject to the floating charge by virtue of which the receiver was appointed.
- (2) A receiver appointed by the court under section 467(2) may resign only with the authority of the court and on such terms and conditions, if any, as may be laid down by the court.
- (3) Subject to subsection (4) below, a receiver may, on application to the court by the holder of the floating charge by virtue of which he was appointed, be removed by the court on cause shown.
- (4) Where a receiver ceases to act as such, then, in respect of any expenses, charges or other liabilities he may have incurred in the performance of his functions as receiver, he is entitled to be indemnified out of the property which is subject to the floating charge by virtue of which he was appointed.
- (5) When a receiver ceases to act as such otherwise than by death he shall, and, when a receiver is removed by the court, the holder of the floating charge by virtue of which he was appointed shall, within 7 days of the cessation or removal, as the case may be, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.
- If the receiver or the holder of the floating charge, as the case may require, makes default in complying with the requirements of this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.
- (6) If by the expiry of a period of one month following upon the removal of the receiver or his ceasing to act as such no other receiver has been appointed, the floating charge by virtue of which the receiver was appointed—
- (a) thereupon ceases to attach to the property then subject to the charge; and
  - (b) again subsists as a floating charge.

#### **479 Powers of court**

- (1) A holder of a floating charge by virtue of which a receiver was appointed may apply to the court for directions in any matter arising in connection with the performance by the receiver of his functions.
- (2) Where a floating charge by virtue of which a person is purported to have been appointed receiver is discovered to be invalid, the court may, if it thinks fit, in whole or in part relieve that person from personal liability in respect of anything done or omitted to be done which, had he been validly appointed, would have been properly done or omitted.
- (3) The court may, if it thinks fit, make the person by whom the invalid appointment was made personally liable in respect of anything done or omitted to be done to the extent to which the person purported to have been appointed receiver has been relieved of personal liability.

#### **480 Notification that receiver appointed**

- (1) Where a receiver has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.
- (2) If default is made in complying with the requirements of 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, is liable to a fine.

#### **481 Provisions as to information where receiver appointed**

- (1) Where a receiver is appointed then, subject to the provisions of this section and the section next following—
  - (a) he shall forthwith send notice to the company of his appointment; and
  - (b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the court or in writing by the receiver, be made out and submitted to the receiver in accordance with section 482 a statement in the prescribed form as to the affairs of the company; and
  - (c) the receiver shall, within 2 months after receipt of the statement, send—
    - (i) to the registrar of companies and to the court, a copy of the statement and of any comments he sees fit to make thereon and, in the case of the registrar of companies, also a summary of the statement and of his comments (if any) thereon; and
    - (ii) to the company, a copy of any such comments or, if he does not see fit to make any comment, a notice to that effect; and
    - (iii) to the holder of the floating charge by virtue of which he was appointed, 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 said summary.
- (2) The receiver shall, within two months, or such longer period as the court may allow, after the expiration of the period of 12 months from the date of his appointment and of every subsequent period of twelve months, and within two months, or such longer period as the court may allow, after he ceases to act as receiver, send to—
  - (a) the registrar of companies;
  - (b) the company;
  - (c) the holder of the floating charge by virtue of which he was appointed;
  - (d) any trustees for the debenture-holders of the company on whose behalf he was appointed;
  - (e) all such debenture-holders (so far as he is aware of their addresses); and
  - (f) the holders of all other floating charges or fixed securities over property of the company,

an abstract in the prescribed form showing his receipts and payments during that period of twelve months, or, where he ceases to act as receiver, during the period from the end of the period 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 amounts of his receipts and of his payments during all preceding periods since his appointment.

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- (3) Where the receiver is appointed by the holder of the floating charge under section 467, this section has effect—
- (a) with the omission of the references to the court in subsection (1); and
  - (b) with the substitution for the references to the court in subsection (2) of references to the Secretary of State;
- and, in any other case, references to the court shall be taken as referring to the court by which the receiver was appointed.
- (4) Subsection (1) does not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver dying or ceasing to act, except that, where that subsection applies to a receiver who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) of the subsection include (subject to subsection (5)) reference to his successor and to any continuing receiver.
- Nothing in this subsection shall be taken as limiting the meaning of the expression "the receiver" where used in, or in relation to, subsection (2).
- (5) Where the company is being wound up, this section and section 482 shall apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact
- (6) Nothing in subsection (2) above prejudices the duty of the receiver 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 that subsection.
- (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.

#### **482 Special provisions as to statement submitted to receiver**

- (1) The statement as to the affairs of a company required by section 481 to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.
- (2) The statement shall be submitted by, and be verified by the statutory declaration 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 below in this subsection as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—
- (a) who are or have been officers of the company ;
  - (b) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
  - (c) who are in the employment of the company, or have been in its employment within that year, and are, in the opinion of the receiver, capable of giving the information required;
  - (d) who are, or have been within 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.

- (3) Any person making the statement and statutory declaration shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in the preparation and making of the statement and statutory declaration as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.
- (4) Where the receiver is appointed by the holder of the floating charge under section 467(1), this section has effect with the substitution for the references to the court in subsections (2) and (3) of references to the Secretary of State ; and in any other case references to the court are to be taken as referring to the court by which the receiver was appointed.
- (5) If any 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.
- (6) References in this section to the receiver's successor include a continuing receiver.

#### **483 Enforcement of receiver's duty to make returns, etc.**

- (1) If any receiver—
  - (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is by law 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) has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to 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 to make good the default within such time as may be specified in the order.
- (2) In the case of any such default as is mentioned in subsection (1)(a), an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies, and, in the case of any such default as is mentioned in subsection (1)(b) the application shall be made by the liquidator, and, in either case, the order may provide that all expenses of and incidental to the application shall be borne by the receiver.
- (3) Nothing in this section prejudices the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

#### **484 Interpretation for Chapter II**

- (1) In this Chapter, unless the contrary intention appears, the following expressions have the following meanings respectively assigned to them, that is to say—
  - " company " means an incorporated company (whether a company within the meaning of this Act or not which the Court of Session has jurisdiction to wind up;
  - " secured debenture " means a bond, debenture, debenture stock or other security which, either itself or by reference to any other instrument, creates a floating charge over all or any part of the property of the company, but does not include a security which creates no charge other than a fixed security ;

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" series of secured debentures" means two or more secured debentures created as a series by the company in such a manner that the holders thereof are entitled *pari passu* to the benefit of the floating charge.

- (2) Where a floating charge, secured debenture or series of secured debentures has been created by the company, then, except where the context otherwise requires, any reference in this Chapter to the holder of the floating charge shall—
- (a) where the floating charge, secured debenture or series of secured debentures provides for a receiver to be appointed by any person or body, be construed as a reference to that person or body;
  - (b) where, in the case of a series of secured debentures, no such provision has been made therein but—
    - (i) there are trustees acting for the debenture-holders under and in accordance with a trust deed, be construed as a reference to those trustees; and
    - (ii) where no such trustees are acting, be construed as a reference to—
      - (aa) 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
      - (bb) where no such meeting is held, the holders of at least one-half in nominal value of the outstanding debentures of the series.
- (3) Any reference in this Chapter to a floating charge, secured debenture, series of secured debentures or instrument creating a charge includes, except where the context otherwise requires, a reference to that floating charge, debenture, series of debentures or instrument as varied by any instrument.

#### **485 Prescription of forms etc., and regulations**

- (1) The notice referred to in section 478(5) and the notice referred to in section 481(1) (a) and the statutory declaration referred to in section 482(2) shall be in such form as may be prescribed.
- (2) Any power conferred by this Part on the Secretary of State to make regulations is exercisable by statutory instrument; and a statutory instrument made in the exercise of any power so conferred to prescribe a fee is subject to annulment in pursuance of a resolution of either House of Parliament.

### **CHAPTER III**

#### **GENERAL**

#### **486 Interpretation for Part XVIII generally**

- (1) In this Part, unless the context otherwise requires, the following expressions have the following meanings respectively assigned to them, that is to say—
- " ancillary document" means—



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- (a) a document which relates to the floating charge and which was executed by the debtor or creditor in the charge before the registration of the charge in accordance with Chapter II of Part XII; or
- (b) an instrument of alteration such as is mentioned in section 466 in this Part;

" company ", other than in Chapter II of this Part, means an incorporated company (whether a company within the meaning of this Act or not);

" fixed security ", in relation to any property of a company, means any security, other than a floating charge or a charge having the nature of a floating charge, which on the winding up of the company in Scotland would be treated as an effective security over that property, and (without prejudice to that generality) includes a security over that property, being a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970;

" instrument of appointment" has the meaning given by section 469(1);

" prescribed " means prescribed by regulations made under this Part by the Secretary of State ;

" receiver" means a receiver of such part of the property of the company as is subject to the floating charge by virtue of which he has been appointed under section 467;

" register of charges " means the register kept by the registrar of companies for the purposes of Chapter II of Part XII;

" Register of Sasines " means the appropriate division of the General Register of Sasines.

#### **487    Extent of Part XVIII**

This Part extends to Scotland only.