



Companies Act 1985

1985 CHAPTER 6

PART XVIII

FLOATING CHARGES AND RECEIVERS (SCOTLAND)

CHAPTER I

FLOATING CHARGES

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;
 - (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.

Status: This is the original version (as it was originally enacted).

- (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.