



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER III

ADMINISTRATION ORDERS

Administrators

32 Appointment of administrator

- (1) The administrator of a company shall be appointed either by the administration order or by an order under subsection (2) below.
- (2) If a vacancy occurs by death, resignation or otherwise in the office of administrator of a company, the court may by order fill the vacancy.
- (3) An application for an order under subsection (2) above may be made—
 - (a) by any continuing administrator of the company ; or
 - (b) where there is no such administrator, by any committee established under section 43 below; or
 - (c) where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company.

33 General powers

- (1) The administrator of a company—
 - (a) may do all such things as may be necessary for the management of the affairs, business and property of the company; and

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(b) without prejudice to the generality of paragraph (a) above, shall have the powers specified in Schedule 3 to this Act;
 and in the application of that Schedule to the administrator of a company the words " he " and " him " shall be taken to refer to the administrator.

- (2) The administrator of a company shall also have power—
- (a) to remove any director of the company and to appoint any person to be a director of the company, whether to fill any vacancy or otherwise ; and
 - (b) to call any meeting of the members or creditors of the company.
- (3) The administrator may apply to the court for directions in relation to any particular matter arising in connection with the carrying out of his functions.
- (4) Any power conferred on the company or its officers, whether by this Part or the 1985 Act or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers shall not be exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.
- (5) In exercising his powers the administrator of a company shall be deemed to be acting as agent of the company.
- (6) A person dealing with the administrator of a company in good faith and for value shall not be concerned to inquire whether the administrator is acting within his powers.

34 Power to deal with charged property etc.

- (1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies as if the property were not subject to the security.
- (2) Where, on an application by the administrator of a company, the court is satisfied that the disposal (with or without other assets) of—
- (a) any property of the company subject to a security to which this subsection applies ; or
 - (b) any goods in the possession of the company under a hire purchase agreement, would be likely to promote the purpose or one or more of the purposes specified in the administration order, the court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.
- (3) Subsection (1) above applies to any security which, as created, was a floating charge and subsection (2) above applies to any other security.
- (4) Where any property is disposed of under subsection (1) above, the holder of the security shall have the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.
- (5) It shall be a condition of an order under subsection (2) above that—
- (a) the net proceeds of the disposal; and
 - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or

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goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

- (6) Where a condition imposed in pursuance of subsection (5) above relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.
- (7) An office copy of an order under subsection (2) above shall, within fourteen days after the making of the order, be sent by the administrator to the registrar of companies.
- (8) If the administrator without reasonable excuse fails to comply with subsection (7) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.
- (9) Where any property is disposed of under this section in its application to Scotland, the administrator shall grant to the disponee an appropriate document of transfer or conveyance of the property, and—
 - (a) that document; or
 - (b) where any recording, intimation or registration of that document is a legal requirement for completion of title to the property, that recording, intimation or registration,has the effect of disencumbering the property of or, as the case may be, freeing the property from the security.
- (10) Where any goods in the possession of the company under a hire-purchase agreement are disposed of under this section in its application to Scotland, the disposal shall have the effect of extinguishing, as against the disponee, all rights of the owner of the goods under the hire-purchase agreement.
- (11) Nothing in this section shall be taken as prejudicing applications to the court under section 44 below.
- (12) References in this section to hire-purchase agreements include references to conditional sale agreements, chattel leasing agreements and retention of title agreements.

35 General duties

- (1) The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.
- (2) The administrator of a company shall manage the affairs, business and property of the company—
 - (a) at any time before proposals have been approved (with or without modifications) under section 41 below, in accordance with any directions given by the court; and
 - (b) at any time after proposals have been so approved, in accordance with those proposals as from time to time revised, whether by him or a predecessor of his.

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- (3) The administrator of a company shall summon a meeting of the company's creditors if—
- (a) he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors ; or
 - (b) he is directed to do so by the court.

36 Applications for discharge or variation of administration order

- (1) The administrator of a company may at any time apply to the court for the administration order to be discharged, or to be varied so as to specify an additional purpose.
- (2) The administrator of a company shall make an application under this section if—
- (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement; or
 - (b) he is required to do so by a meeting of the company's creditors summoned for the purpose in accordance with the rules.
- (3) On the hearing of an application under this section, the court may by order discharge or vary the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.
- (4) Where the administration order is discharged or varied, the administrator shall, within fourteen days after the making of the order effecting the discharge or variation, send an office copy of that order to the registrar of companies.
- (5) If the administrator without reasonable excuse fails to comply with subsection (4) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

37 Vacation of office and release

- (1) The administrator of a company may at any time be removed from office by order of the court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (2) The administrator of a company shall vacate office if—
- (a) he ceases to be qualified to act as an insolvency practitioner in relation to the company; or
 - (b) the administration order is discharged.
- (3) Where at any time a person ceases to be the administrator of a company—
- (a) his remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security to which section 34(1) above then applies; and
 - (b) any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into or contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall be charged on and paid out of any such property

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as is mentioned in paragraph (a) above in priority to any charge arising under that paragraph;

and for the purposes of paragraph (b) above the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen days after his appointment.

- (4) A person who has ceased to be the administrator of a company shall have his release with effect from the following time, that is to say—
- (a) in the case of a person who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
 - (b) in any other case, such time as the court may determine.
- (5) Where a person has his release under this section, he shall, with effect from the time specified in subsection (4) above, be discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under this section, of the court's powers under section 19 above.