



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER III

ADMINISTRATION ORDERS

Making etc. of administration orders

27 Power to make order

- (1) Subject to subsection (2) below, if the court—
- (a) is satisfied that a company is or is likely to become unable to pay its debts; and
 - (b) considers that the making of an order under this section would be likely to achieve one or more of the purposes mentioned in subsection (3) below,
- the court may make an administration order in relation to the company, that is to say, an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a person (to be known as "the administrator") appointed for the purpose by the court; and such an order shall specify the purpose or purposes for whose achievement it is made.
- (2) An administration order shall not be made in relation to a company—
- (a) after the company has gone into liquidation;
 - (b) where the company is an insurance company within the meaning of the Insurance Companies Act 1982 ; or
 - (c) where the company is a recognised bank or licensed institution within the meaning of the Banking Act 1979 or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution.
- (3) The purposes referred to in subsection (1)(b) above are—

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- (a) the survival of the company, and the whole or any part of its undertaking, as a going concern ;
 - (b) the approval under section 23 above of a composition in satisfaction of the company's debts or a scheme of arrangement of its affairs ;
 - (c) the sanctioning under section 425 of the 1985 Act of a compromise or arrangement between the company and any such persons as are mentioned in that section ; and
 - (d) a more advantageous realisation of the company's assets than would be effected on a winding up.
- (4) Section 518 of the 1985 Act (definition of inability to pay debts) shall apply for the purposes of this section as it applies for the purposes of Chapter II of Part XX of that Act.

28 Application for order

- (1) An application to the court for an administration order shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any contingent or prospective creditor or creditors), or by all or any of those parties, together or separately.
- (2) Where a petition is presented to the court—
- (a) notice of the petition shall be given forthwith to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company and to such other persons as may be prescribed; and
 - (b) the petition shall not be withdrawn except with the leave of the court.
- (3) Where the court is satisfied that there is an administrative receiver of the company, the court shall dismiss the petition unless it is also satisfied either—
- (a) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order; or
 - (b) that, if an administration order were made, any security by virtue of which the receiver was appointed would be liable to be released or discharged under section 101 below, would be avoided under section 104 below or would be challengeable under section 615A or 615B of the 1985 Act or under any rule of law in Scotland.
- (4) Subject to subsection (3) above, on hearing a petition the court may dismiss the petition, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (5) Without prejudice to the generality of subsection (4) above, an interim order under that subsection may restrict the exercise of any powers of the directors or of the company (whether by reference to the consent of the court or of a person qualified to act as an insolvency practitioner in relation to the company or otherwise).

29 Effect of application

- (1) During the period beginning with the presentation of a petition for an administration order and ending with the making of such an order or the dismissal of the petition—
- (a) no resolution may be passed or order made for the winding up of the company ;

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- (b) no steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose; and
 - (c) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as aforesaid.
- (2) Nothing in subsection (1) above shall require the leave of the court—
- (a) for the presentation of a petition for the winding up of the company;
 - (b) for the appointment of an administrative receiver of the company; or
 - (c) for the carrying out by such a receiver (whenever appointed) of any of his functions.
- (3) Where
- (a) a petition for an administration order is presented at a time when there is an administrative receiver of the company; and
 - (b) the person by or on whose behalf the receiver was appointed has not consented to the making of the order,
- the period mentioned in subsection (1) above shall be deemed not to begin unless and until that person so consents.
- (4) References in this section and section 30 below to hire-purchase agreements include references to conditional sale agreements, chattel leasing agreements and retention of title agreements.
- (5) In the application of this section and section 30 below to Scotland, references to execution being commenced or continued shall include references to diligence being carried out or continued and references to distress being levied shall be omitted.

30 Effect of order

- (1) On the making of an administration order—
- (a) any petition for the winding up of the company shall be dismissed; and
 - (b) any administrative receiver of the company shall vacate office.
- (2) Where an administration order has been made, any receiver of part of the company's property shall vacate office on being required to do so by the administrator.
- (3) During the period for which an administration order is in force—
- (a) no resolution may be passed or order made for the winding up of the company ;
 - (b) no administrative receiver of the company may be appointed;
 - (c) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose; and
 - (d) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as aforesaid.

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- (4) Where at any time an administrative receiver of the company has vacated office under subsection (1)(b) above or a receiver of part of the company's property has vacated office under subsection (2) above—
- (a) his remuneration and any expenses properly incurred by him; and
 - (b) any indemnity to which he is entitled out of the assets of the company,
- shall be charged on and, subject to subsection (3) above, paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.
- (5) Neither an administrative receiver of a company who vacates office under subsection (1)(b) above nor a receiver of part of a company's property who vacates office under subsection (2) above shall be required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by section 196 or 475 of the 1985 Act (duty to pay preferential creditors).

31 Notification of order

- (1) Every invoice, order for goods or business letter which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.
- (2) If default is made in complying with this section, the company and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum.

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.

Ascertainment and investigation of company's affairs

38 Information to be given by administrator

- (1) Where an administration order has been made, the administrator shall—
- (a) forthwith send to the company and publish in the prescribed manner a notice of the order ; and
 - (b) within twenty-eight days after the making of the order, unless the court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of their addresses).
- (2) Where an administration order has been made, the administrator shall also, within fourteen days after the making of the order, send an office copy of the order to the registrar of companies and to such other persons as may be prescribed.
- (3) If the administrator without reasonable excuse fails to comply with this section, 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.

39 Statement of affairs to be submitted to administrator

- (1) Where an administration order has been made, the administrator shall forthwith require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
- (a) particulars of the company's assets, debts and liabilities;
 - (b) the names and addresses of its creditors ;
 - (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.

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- (3) The persons referred to in subsection (1) above are—
- (a) those who are or have been officers of the company;
 - (b) those who have taken part in the company's formation at any time within one year before the date of the administration order;
 - (c) those who are in the company's employment or have been in its employment within that year, and are in the administrator's opinion capable of giving the information required;
 - (d) those 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 ;
- and in this subsection " employment" includes employment under a contract for services.
- (4) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to subsection (5) below) before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrator.
- (5) The administrator, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
 - (b) either when giving the notice mentioned in subsection (4) above or subsequently, extend the period so mentioned ;
- and where the administrator has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Administrators' proposals

40 Statement of proposals

- (1) Where an administration order has been made, the administrator shall, within three months (or such longer period at the court may allow) after the making of the order—
- (a) send to the registrar of companies and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving the purpose or purposes specified in the order; and
 - (b) lay a copy of the statement before a meeting of the Company's creditors summoned for the purpose on not less than fourteen days' notice.
- (2) The administrator shall also, within three months (or such longer period as the court may allow after the making of the order, either—
- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company ; or

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- (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.
- (3) Subsection (3) of section 38 above applies for the purposes of this section as it applies for the purposes of that section.

41 Consideration of proposals by creditors' meeting

- (1) A meeting of creditors summoned under section 40 above shall decide whether to approve the administrator's proposals.
- (2) Such a meeting may approve the proposals with modifications but shall not do so unless the administrator consents to each modification.
- (3) Subject to subsections (1) and (2) above, a meeting summoned under section 40 above shall be conducted in accordance with the rules.
- (4) After the conclusion in accordance with the rules of a meeting summoned under section 40 above, the administrator shall report the result of the meeting to the court and shall give notice of that result to the registrar of companies and to such persons as may be prescribed.
- (5) If a report is given to the court under subsection (4) above that the meeting has declined to approve the administrator's proposals (with or without modifications), the court may by order discharge 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 that it thinks fit.
- (6) Where the administration order is discharged, the administrator shall, within fourteen days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies.
- (7) If the administrator without reasonable excuse fails to comply with subsection (6) 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.

42 Approval of substantial revisions

- (1) This section applies where—
 - (a) proposals have been approved (with or without modifications) under section 41 above ; and
 - (b) the administrator proposes to make revisions of those proposals which appear to him substantial.
- (2) The administrator shall—
 - (a) send to all creditors of the company (so far as he is aware of their addresses) a statement in the prescribed form of his proposed revisions ; and
 - (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than fourteen days' notice ;and shall not make the proposed revisions unless they are approved by the meeting.
- (3) The administrator shall also either—

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- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company ; or
 - (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.
- (4) A meeting of creditors summoned under subsection (2) above may approve the proposed revisions with modifications but shall not do so unless the administrator consents to each modification.
- (5) Subject to subsections (2) and (4) above, such a meeting shall be conducted in accordance with the rules.
- (6) After the conclusion in accordance with the rules of a meeting summoned under subsection (2) above, the administrator shall give notice of the result of the meeting to the registrar of companies and to such persons as may be prescribed.

Miscellaneous

43 Committee of creditors

- (1) Where a meeting of creditors summoned under section 40 above has approved the administrator's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it by or under this Part.
- (2) If such a committee is established, the committee may, on giving not less than seven days' notice, require the administrator to attend before it at any reasonable time and furnish it with such information relating to the carrying out of his functions as it may reasonably require.

44 Protection of interests of creditors and members

- (1) At any time when an administration order is in force, a creditor or member of the company may apply to the court by petition for an order under this section on the ground—
- (a) that the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members (including at least himself); or
 - (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial.
- (2) On an application for an order under this section the court may, subject to subsection (3) below, make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (3) An order under this section shall not prejudice or prevent—
- (a) the implementation of any composition or scheme approved under section 23 above or any compromise or arrangement sanctioned under section 425 of the 1985 Act; or

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- (b) where the application for the order was made more than twenty-eight days after the approval of any proposals or revised proposals under section 41 or 42 above, the implementation of those proposals or revised proposals.
- (4) Subject to subsection (3) above, an order under this section may in particular—
- (a) regulate the future management by the administrator of the company's affairs, business and property ;
 - (b) require the administrator to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained he has omitted to do;
 - (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct;
 - (d) discharge the administration order and make such consequential provision as it thinks fit.
- (5) Where the administration order is discharged, the administrator shall, within fourteen days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies.
- (6) If the administrator without reasonable excuse fails to comply with subsection (5) 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 fine not exceeding one-fiftieth of the statutory maximum.