



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER IV

RECEIVERS AND MANAGERS (ENGLAND AND WALES)

Preliminary

45 Preliminary

- (1) This Chapter does not apply to receivers appointed under section 467 of the 1985 Act (power to appoint receivers under law of Scotland).
- (2) In this Chapter " administrative receiver " means—
 - (a) a receiver or manager of the whole (or substantially the whole) of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or
 - (b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property.

Receivers and managers appointed out of court

46 Appointment of receiver or manager

- (1) The appointment of a person as the receiver or manager of a company's property under powers contained in an instrument—

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- (a) shall be of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf; and
 - (b) subject to paragraph (a) above, shall be deemed to be made at the time at which the instrument of appointment is so received.
- (2) This section shall apply to the appointment of two or more persons as joint receivers or managers of a company's property under powers contained in an instrument subject to such modifications as may be prescribed by the rules.

47 Liability for invalid appointment

Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

Administrative receivers: general

48 General powers

- (1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed shall be deemed to include, except in so far as they are inconsistent with any of the provisions of those debentures, the powers specified in Schedule 3 to this Act; and in the application of that Schedule to the administrative receiver of a company—
- (a) the words " he " and " him " shall be taken to refer to the administrative receiver ; and
 - (b) references to the property of the company shall be construed as references to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.
- (2) A person dealing with the administrative receiver of a company in good faith and for value shall not be concerned to inquire whether the administrative receiver is acting within his powers.

49 Power to dispose of charged property etc.

- (1) Where, on an application by the administrative receiver of a company, the court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security other than one to which subsection (2) below applies would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.
- (2) This subsection applies to—
- (a) any security held by the person by or on whose behalf the administrative receiver was appointed; and
 - (b) any security to which a security falling within paragraph (a) above has priority.

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- (3) It shall be a condition of an order under this section 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 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.
- (4) Where a condition imposed in pursuance of subsection (3) 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.
- (5) An office copy of an order under this section shall, within fourteen days of the making of the order, be sent by the administrative receiver to the registrar of companies.
- (6) If the administrative receiver 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 daily default fine not exceeding one-fiftieth of the statutory maximum.
- (7) In this section "relevant property", in relation to the administrative receiver of a company, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

50 Agency and liability for contracts

- (1) The administrative receiver of a company—
- (a) shall be deemed to be the agent of the company unless and until the company goes into liquidation ;
 - (b) shall be personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the carrying out of those functions ; and
 - (c) shall be entitled in respect of that liability to an indemnity out of the assets of the company ;
- and for the purposes of paragraph (b) above the administrative receiver 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.
- (2) This section does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

51 Vacation of office

- (1) An administrative receiver of a company may at any time be removed from office by order of the court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

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- (2) An administrative receiver of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (3) Where at any time an administrative receiver of a company vacates office—
 - (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 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 held by the person by or on whose behalf he was appointed.
- (4) Where an administrative receiver of a company vacates office otherwise than by death, he shall, within fourteen days after his vacation of office, send a notice to that effect to the registrar of companies.
- (5) If an administrative receiver of a company 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.

Administrative receivers: ascertainment and investigation of company's affairs

52 Information to be given by administrative receiver

- (1) Where an administrative receiver of a company is appointed, the administrative receiver shall—
 - (a) forthwith send to the company and publish in the prescribed manner a notice of his appointment; and
 - (b) within twenty-eight days after his appointment, unless the court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).
- (2) This section and section 53 below do not apply in relation to the appointment of an administrative receiver to act—
 - (a) with an existing administrative receiver ; or
 - (b) in place of an administrative receiver dying or ceasing to act,
 except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this section and section 53 below to the administrative receiver include (subject to subsection (3) below) his successor and any continuing administrative receiver.
- (3) If the company is being wound up, this section and section 53 below apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (4) If the administrative receiver 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.

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53 Statement of affairs to be submitted to administrative receiver

- (1) Where an administrative receiver of a company is appointed, the administrative receiver 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.
- (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 appointment of the administrative receiver ;
 - (c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver'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 administrative receiver, 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 administrative receiver.
- (5) The administrative receiver, 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 administrative receiver 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.

54 Report by administrative receiver

- (1) Where an administrative receiver of a company is appointed, he shall, within three months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to any trustees for secured creditors of the company and (so

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far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—

- (a) the events leading up to his appointment, so far as he is aware of them ;
 - (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
 - (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors in accordance with section 89 below ; and
 - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The administrative receiver shall also, within three months (or such longer period as the court may allow) after his appointment, either—
- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company; or
 - (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,

and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than fourteen days' notice.

- (3) The court shall not give a direction under subsection (2) above unless—
- (a) the report states the intention of the administrative receiver to apply for the direction ; and
 - (b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than fourteen days before the hearing of the application.
- (4) Where the company has gone or goes into liquidation, the administrative receiver—
- (a) shall, within seven days after his compliance with subsection (1) above or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator; and
 - (b) where he does so within the time limited for compliance with subsection (2) above, shall not be required to comply with that subsection.
- (5) A report under this section shall include a summary of the statement of affairs made out and submitted to the administrative receiver under section 53 above and of his comments (if any) on it.
- (6) Nothing in this section shall be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.
- (7) Subsections (2) and (4) of section 52 above shall apply for the purposes of this section as they apply for the purposes of that section.

55 Committee of creditors

- (1) Where a meeting of creditors is summoned under section 54 above, the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it by or under this Part.

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- (2) If such a committee is established, the committee may on giving not less than seven days' notice require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.