



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER V

RECEIVERS (SCOTLAND)

56 Appointment of receiver

In section 469 of the 1985 Act (mode of appointment of receiver by holder of a charge)

(a) for subsection (6) there shall be substituted the following subsection—

“(6) The appointment of a person as a receiver by an instrument of appointment in accordance with subsection (1) above—

(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 (d) above, shall be deemed to be made on the day on and at the time at which the instrument of appointment is so received, as evidenced by a written document by that person or on his behalf ;

and this subsection shall apply to the appointment of joint receivers subject to such modifications as may be prescribed.”; and

(b) after subsection (7) there shall be inserted the following subsection—

“(8) In this section ' business day ' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain.”

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57 Powers of receiver

Section 471 of the 1985 Act (which sets out the powers of receivers in Scotland) shall be amended as follows—

- (a) in paragraph (c) of subsection (1) after the word "to " there shall be inserted the words " raise or ";
- (b) paragraph (e) of that subsection shall be omitted ;
- (c) in paragraph (f) of that subsection, for the words " discharge servants " there shall be substituted the words " dismiss employees ";
- (d) for paragraph (m) of that subsection there shall be substituted the following paragraph—
 - “(m) power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property ;”;
- (e) in paragraph (o) of that subsection, for the words " so far as he thinks it desirable to do so " there shall be substituted the words " or any part of it " ; (ft for paragraph (p) of that subsection there shall be substituted the following paragraphs—
 - “(p) power to grant or accept a surrender of a lease or tenancy of any of the property, and to take a lease or tenancy of any property required or convenient for the business of the company ;
 - (pp) power to make any arrangement or compromise on behalf of the company;
 - (ppp) power to call up any uncalled capital of the company;
 - (pppp) power to establish subsidiaries of the company;
 - (ppppp) power to transfer to subsidiaries of the company the business of the company or any part of it and any of the property ;”;
- (g) after paragraph (r) of that subsection there shall be inserted the following paragraph—
 - “(rr) power to change the situation of the company's registered office ;”;
- (h) for subsection (3) there shall be substituted the following subsection—
 - “(3) A person dealing with a receiver in good faith and for value shall not be concerned to inquire whether the receiver is acting within his powers.”

58 Agency and liability of receiver for contracts

- (1) Section 473 of the 1985 Act (agency and liability of receiver for contracts) shall be amended as follows.
- (2) In subsection (2)—
 - (a) the words " Subject to subsection (1) " shall be omitted ; and
 - (b) after the word " provides " there shall be inserted the words " , and on any contract of employment adopted by him in the carrying out of those functions " .
- (3) After subsection (4) there shall be inserted the following subsections—

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“(4A) For the purposes of subsection (2), a receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.

(4B) This section does not limit any right to indemnity which the 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.”

59 Disposal of interest in property

(1) Section 477 of the 1985 Act (disposal of interest in property) shall be amended as follows.

(2) In subsection (2)—

- (a) at the beginning there shall be inserted the words " Subject to subsection (2A) below, " ; and
- (b) the words from " But that authorisation " to the end of the subsection shall be omitted.

(3) After subsection (2) there shall be inserted the following subsections—

“(2A) In the case of an application 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, the court shall not authorise the sale or disposal of the property or interest in question unless it is satisfied that the sale or disposal would be likely to provide a more advantageous realisation of the company's assets than would otherwise be effected.

(2B) It shall be a condition of an authorisation to which subsection (2A) above applies 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 interest in the open market by a willing seller, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the fixed security.

(2C) Where a condition imposed in pursuance of subsection (2B) above relates to two or more such fixed 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 fixed securities in the order of their priorities.

(2D) A copy of an authorisation under subsection (2) above certified by the clerk of court shall, within 14 days of the granting of the authorisation, be sent by the receiver to the registrar of companies.

(2E) If the receiver without reasonable excuse fails to comply with subsection (2D) above, he is liable to a fine and, for continued contravention, to a daily default fine.”

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60 Vacation of appointment by receiver

(1) Section 478 of the 1985 Act (vacation of appointment by receiver) shall be amended as follows.

(2) For subsections (1) and (2) there shall be substituted the following subsections—

“(1) A receiver may be removed from office by the court under subsection (3) below and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

(2) A receiver shall vacate office if he ceases to be qualified (within the meaning of the Insolvency Act 1985) to act as an insolvency practitioner in relation to the company.”

(3) For subsection (4) there shall be substituted the following subsection—

“(4) Where at any time a receiver vacates office—

(a) his remuneration and any expenses properly incurred by him; and

(b) any indemnity to which he is entitled out of the property of the company,

shall be paid out of the property of the company which is subject to the floating charge and shall have priority as provided for in section 476(1).”

(4) In subsection (5) for the words " 7 days " there shall be substituted the words " 14 days ".

61 Powers of court

For section 479 of the 1985 Act there shall be substituted the following section—

“479 Powers of court.

(1) The court on the application of—

(a) the holder of a floating charge by virtue of which a receiver was appointed ; or

(b) a receiver appointed under section 467,

may give directions to the receiver in respect of any matter arising in connection with the performance by him of his functions.

(2) Where the appointment of a person as a receiver by the holder of a floating charge is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the holder of the floating charge to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.”

62 Information to be given by receiver

For section 481 of the 1985 Act there shall be substituted the following section—

“481 Information to be given by receiver.

(1) Where a receiver is appointed, he shall—

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- (a) forthwith send to the company and publish notice of his appointment; and
 - (b) within 28 days after his appointment, unless the court otherwise directs, send such notice to all the creditors of the company (so far as he is aware of their addresses).
- (2) This section and section 482 do not apply in relation to the appointment of a receiver to act—
- (a) with an existing receiver, or
 - (b) in place of a receiver dying or ceasing to act,
- except that, where they apply to a receiver who dies or ceases to act before they have been fully complied with, the references in this section and section 482 to the receiver include (subject to subsection (3) below) his successor and any continuing receiver.
- (3) If the company is being wound up, this section and section 482 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (4) If a person without reasonable excuse fails to comply with this section, he shall be liable to a fine and, for continued contravention, to a daily default fine.”

63 Company's statement of affairs

For section 482 of the 1985 Act there shall be substituted the following section—

“482 Company's statement of affairs.

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

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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 receiver they shall do so (subject to subsection (5) below) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the receiver.
- (5) The 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 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 to a fine and, for continued contravention, to a daily default fine.”

64 Report by receiver

After section 482 of the 1985 Act there shall be inserted the following section—

“482A Report by receiver.

- (1) Where a receiver is appointed under section 467 he shall within 3 months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to the holder of the floating charge by virtue of which he was appointed and to any trustees for secured creditors of the company and (so 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 holder of the floating charge by virtue of which he was appointed and the amounts payable to preferential creditors in accordance with section 89 of the Insolvency Act 1985; and
 - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The receiver shall also, within 3 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,

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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 14 days' notice.

- (3) The court shall not give a direction under subsection (2) above unless—
- (a) the report states the intention of the 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 14 days before the hearing of the application.
- (4) Where the company has gone or goes into liquidation, the receiver—
- (a) shall, within 7 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 receiver under section 482 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 receiver of his functions.
- (7) Subsections (2) and (4) of section 481 shall apply for the purposes of this section as they apply for the purposes of that section.
- (8) In this section 'secured creditor', in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and 'unsecured creditor' shall be construed accordingly.”

65 Committee of creditors

After section 482A of the 1985 Act there shall be inserted the following section—

“482B Committee of creditors.

- (1) Where a meeting of creditors is summoned under section 482A above, the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it by or under this Act or Part II of the Insolvency Act 1985.
- (2) If such a committee is established, the committee may on giving not less than 7 days' notice require the 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.”