



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER VII

GENERAL

Preliminary

95 Preliminary

- (1) The following provisions of this Chapter shall apply—
 - (a) where a company goes into liquidation;
 - (b) where an administration order is made in relation to a company; and
 - (c) except in the case of sections 101 to 105, where an administrative receiver of a company is appointed;and in those provisions " the office holder " means the liquidator, the administrator or the administrative receiver, as the case may be.
- (2) Sections 96 to 100 and 105 below shall apply where a provisional liquidator is appointed as they apply where a company goes into liquidation, and references in those sections to the office holder shall be construed accordingly.
- (3) Section 97 below shall apply where a composition or scheme approved by meetings summoned under section 22 above has taken effect as it applies where a company goes into liquidation as if references in that section to the office holder were references to the supervisor of the composition or scheme.

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Provisions applying generally

96 General provisions as to office holders

- (1) Without prejudice to any enactment under which the official receiver is to be, or may be, liquidator of a company, the office holder must be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (2) If an appointment or nomination of any person to the office relates to more than one person or has the effect that the office is to be held by more than one person, the appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the office holder is to be done by all or any one or more of the persons for the time being holding the office.
- (3) The acts of an individual as the office holder shall be valid notwithstanding any defect in his appointment, nomination or qualifications.

97 Supplies by utilities

- (1) If a request is made by or with the concurrence of the office holder for the giving after the relevant date of any of the supplies mentioned in subsection (2) below, the supplier—
 - (a) may make it a condition of the giving of the supply that the office holder personally guarantees the payment of any charges in respect of the supply; but
 - (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the relevant date are paid.
- (2) The supplies referred to in subsection (1) above are—
 - (a) a supply of gas by the British Gas Corporation;
 - (b) a supply of electricity by an Electricity Board (within the meaning of the Energy Act 1983);
 - (c) a supply of water by statutory water undertakers or, in Scotland, a water authority within the meaning of the Water (Scotland) Act 1980;
 - (d) a supply of telecommunication services (within the meaning of the Telecommunications Act 1984) by a public telecommunications operator (within the meaning Of that Act).
- (3) In subsection (2) above the reference to telecommunication services does not include a reference to services consisting in the conveyance of cable programmes, that is to say programmes included in cable programme services (within the meaning of the Cable and Broadcasting Act 1984).
- (4) For the purposes of this section "the relevant date" is whichever is applicable of the following dates, namely—
 - (a) the date on which the company went into liquidation;
 - (b) the date on which the administration order was made;
 - (c) the date on which the administrative receiver was appointed or if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed;
 - (d) the date on which the provisional liquidator was appointed ; and

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- (e) the date on which the composition or scheme was approved by the meetings summoned under section 22 above.

98 Delivery and seizure of property

- (1) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office holder.
- (2) Where
 - (a) the office holder seizes or disposes of any property which is not property of the company ; and
 - (b) at the time of seizure or disposal the office holder believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,the office holder shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the office holder and shall have a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

99 Duty to co-operate with office holder

- (1) Each of the persons mentioned in subsection (2) below shall—
 - (a) give to the office holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office holder may at any time after the relevant date reasonably require; and
 - (b) attend on the office holder at such times as the office holder may reasonably require.
- (2) The persons referred to in subsection (1) above are—
 - (a) those who are or have at any time been officers of the company;
 - (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
 - (c) those who are in the employment of the company, or have been in its employment within that year, and are in the office holder's opinion capable of giving information which he requires; and
 - (d) those who are, or have within that year been, officers of, or in the employment of, another company which is, or within that year was, an officer of the company in question.
- (3) For the purposes of subsection (2) above " the relevant date " is whichever is applicable of the following dates, namely—
 - (a) the date on which the company went into liquidation ;
 - (b) the date on which the administration order was made ;
 - (c) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed; and
 - (d) the date on which the provisional liquidator was appointed;

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and in that subsection " employment" includes employment under a contract for services.

- (4) This section shall apply in the case of a company that is being wound up by the court—
- (a) as if the persons referred to in subsection (2) above included any person who has acted as liquidator, administrator or administrative receiver of the company; and
 - (b) where the court is in England and Wales, as if references to the office holder included references to the official receiver, whether or not he is the liquidator of the company.
- (5) If a person without reasonable excuse fails to comply with any obligation imposed by 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.

100 Inquiry into company's dealings etc.

- (1) The court may, on the application of the office holder, summon to appear before it—
- (a) any officer of the company ;
 - (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company ; or
 - (c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company;

and the court may require any such person as is mentioned in paragraphs (a) to (c) above to submit an affidavit to the court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) above.

- (2) In a case where a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section, the court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—
- (a) for the arrest of that person; and
 - (b) for the seizure of any books, papers, records, money or goods in that person's possession ;

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

- (3) Any person who appears or is brought before the court under this section may be examined on oath, either orally or (except in Scotland) by interrogatories, concerning the company or the matters mentioned in subsection (1)(c) above.
- (4) If it appears to the court, on consideration of any evidence obtained under this section, that any person has in his possession any property of the company, the court may, on

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the application of the office holder, order that person to deliver the whole or any part of the property to the office holder at such time, in such manner and on such terms as the court thinks fit.

- (5) If it appears to the court, on consideration of any evidence obtained under this section, that any person is indebted to the company, the court may, on the application of the office holder, order that person to pay to the office holder, at such time and in such manner as the court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the court thinks fit.
- (6) This section shall apply in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office holder included references to the official receiver whether or not he is the liquidator of the company.
- (7) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under this section shall be examined in any part of the United Kingdom where he may for the time being be, or in a place outside the United Kingdom.

Provisions applying to liquidations and administrations

101 Transactions at an undervalue and preferences (England and Wales)

- (1) Subject to the following provisions of this section and to section 102 below, where a company has at a relevant time entered into a transaction with any person at an undervalue or given a preference to any person—
 - (a) the office holder may apply to the court for an order under this section; and
 - (b) the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction or, as the case may be, had not given that preference.
- (2) For the purposes of this section and section 102 below a company enters into a transaction with a person at an undervalue if—
 - (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or
 - (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.
- (3) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—
 - (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and
 - (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.
- (4) For the purposes of this section and section 102 below a company gives a preference to a person if—
 - (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and

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- (b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.
- (5) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b) above.
- (6) A company which has given a preference to a person connected with the company at the time the preference was given shall be presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5) above.
- (7) The fact that something has been done in pursuance of the order of a court shall not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.
- (8) Subject to subsection (9) below, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time for the purposes of this section if the transaction is entered into or the preference is given—
- (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company, at a time in the period of two years ending with the commencement date; or
 - (b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of six months ending with that date; or
 - (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (9) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (8)(a) or (b) above, that time shall not be a relevant time for the purposes of this section unless the company—
- (a) is unable to pay its debts within the meaning of section 518 of the 1985 Act at that time; or
 - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference ;
- but the requirements of this subsection shall be presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.
- (10) For the purposes of subsection (8) above the commencement date is—
- (a) in a case where this section applies by reason of the making of an administration order or of a company's going into liquidation immediately upon the discharge of an administration order, the date of the presentation of the petition on which the administration order was made; and
 - (b) in a case where this section applies by reason of a company's going into liquidation at another time, the date of the commencement of the winding up.
- (11) For the purposes of this section a person who is connected with a company by reason only of being its employee shall be deemed not to be connected with the company.

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102 Orders under s. 101

- (1) Without prejudice to the generality of subsection (1)(b) of section 101 above, an order under that section with respect to a transaction or preference entered into or given by a company may (subject to subsection (2) below)—
 - (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company;
 - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
 - (c) release or discharge (in whole or in part) any security given by the company;
 - (d) require any person to pay, in respect of benefits received by him from the company, such sums to the office holder as the court may direct;
 - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate;
 - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference ; and
 - (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.
- (2) An order under section 101 above may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or, as the case may be, the person to whom the preference was given ; but such an order—
 - (a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; and
 - (b) shall not require a person who received a benefit from the transaction or preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the office holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.
- (3) For the purposes of this section the relevant circumstances, in relation to a transaction or preference, are—
 - (a) the circumstances by virtue of which an order under section 101 above could be made in respect of the transaction or preference if the company were to go into liquidation, or an administration order were made in relation to the company, within a particular period after the transaction is entered into or the preference given; and
 - (b) if that period has expired, the fact that the company has gone into liquidation or that such an order has been made.

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- (4) The provisions of section 101 above and this section shall apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

103 Extortionate credit transactions

- (1) This section applies where the company is, or has been a party to a transaction for, or involving, the provision of credit to the company.
- (2) The court may, on the application of the office holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of three years ending with the day on which the company went into liquidation or, as the case may be, the administration order was made.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
 - (b) it otherwise grossly contravened ordinary principles of fair dealing;
- and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—
- (a) provision setting aside the whole or part of any obligation created by the transaction;
 - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held ;
 - (c) provision requiring any person who is or was a party to the transaction to pay to the office holder any sums paid to that person, by virtue of the transaction, by the company;
 - (d) provision requiring any person to surrender to the office holder any property held by him as security for the purposes of the transaction;
 - (e) provision directing accounts to be taken between any persons.
- (5) The powers conferred by this section shall be exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue or under section 615A of the 1985 Act (gratuitous alienations in Scotland).

104 Avoidance of certain floating charges

- (1) Subject to the provisions of this section, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—
- (a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge;

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- (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company; and
 - (c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) above in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.
- (2) Subject to subsection (3) below, the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created—
- (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of two years ending with the commencement date;
 - (b) in the case of a charge which is created in favour of any other person, at a time in the period of twelve months ending with that date ; or
 - (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (3) Where a company creates a floating charge at a time mentioned in subsection (2)(b) above and the person in favour of whom the charge is created is not connected with the company, that time shall not be a relevant time for the purposes of this section unless the company—
- (a) is unable to pay its debts within the meaning of section 518 of the 1985 Act at that time; or
 - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.
- (4) For the purposes of subsection (2) above the commencement date is—
- (a) in a case where this section applies by reason of the making of an administration order, the date of the presentation of the petition on which the order was made; and
 - (b) in a case where this section applies by reason of a company's going into liquidation, the date of the commencement of the winding up.
- (5) For the purposes of subsection (1)(a) above the value of any goods or services supplied by way of consideration for a floating charge shall be the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

105 Unenforceability of liens on books etc.

- (1) Subject to subsection (2) below, a lien or other right to retain possession of any of the books, papers or other records of the company shall be unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office holder.
- (2) Subsection (1) above does not apply to a lien on documents which give a title to property and are held as such.