



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER VIII

SUPPLEMENTAL

106 Company insolvency rules

- (1) Rules may be made—
 - (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of the Secretary of State; or
 - (b) in relation to Scotland, by the Secretary of State,for the purpose of giving effect to this Part and the 1985 Act so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.
- (2) Without prejudice to the generality of subsection (1) above or to any provision of this Part or of the 1985 Act by virtue of which rules under this section may be made with respect to any matter, rules under this section may contain—
 - (a) any such provision as is specified in Schedule 5 to this Act or corresponds to provision contained immediately before the coming into force of this section in rules made, or having effect as if made, under section 663(1) or (2) of the 1985 Act; and
 - (b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Secretary of State necessary or expedient;and in Schedule 5 to this Act " liquidator " includes a provisional liquidator.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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- (4) Regulations made by the Secretary of State under a power conferred by rules under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (5) Nothing in this section or section 107 below shall be taken as prejudicing any power to make rules of court.

107 Fees orders

- (1) There shall be paid in respect of—
 - (a) proceedings under this Part or the 1985 Act so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies ; and
 - (b) the performance by the official receiver or the Secretary of State of functions under this Part or that Act so far as so relating, such fees as the Lord Chancellor in relation to England and Wales, or the Secretary of State in relation to Scotland, may with the sanction of the Treasury by order direct; and the Treasury may by order direct by whom and in what manner the fees are to be collected and accounted for.
- (2) The Lord Chancellor may, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for fees payable by virtue of this section.
- (3) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor, the Secretary of State or, as the case may be, the Treasury necessary or expedient.
- (4) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (5) Fees payable by virtue of this section shall be paid into the Consolidated Fund.
- (6) The application of this section to Scotland shall be without prejudice to the provisions of section 2 of the Courts of Law Fees (Scotland) Act 1895.

108 Construction of Part II

- (1) The provisions of this Part shall be construed as one with the 1985 Act and—
 - (a) so far as relating to the disqualification of directors and others involved in the management of companies, with Part IX of that Act;
 - (b) so far as relating to receivers or managers, with Part XIX of that Act; and
 - (c) so far as relating to the winding up of companies, with Part XX of that Act,
 and references in that Act to itself and to any of those Parts of that Act shall be construed accordingly.
- (2) The following provisions, namely—
 - (a) sections 295 and 301 of the 1985 Act (disqualification orders and register of such orders); and
 - (b) paragraphs I and 3 to 5 of Part I of Schedule 12 to that Act (procedure for applying for and obtaining disqualification orders and applications for leave under such orders),

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shall apply for the purposes of sections 12, 13 and 16 above; and references in those provisions to sections 296 to 299 of that Act shall be construed accordingly.

- (3) In this Part, except in so far as the context otherwise requires—
- " administrative receiver " means—
 - (a) an administrative receiver within the meaning of Chapter IV of this Part; or
 - (b) a receiver appointed under section 467 of the 1985 Act in a case where the whole (or substantially the whole) of the company's property is attached by the floating charge;
 - " 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 ;
 - " chattel leasing agreement " means an agreement for the bailment or, in Scotland, the hiring of goods which is capable of subsisting for more than three months;
 - " floating charge " means a charge which, as created, was a floating charge;
 - " insolvency ", in relation to a company, includes the approval of a composition or scheme under Chapter II of this Part, the making of an administration order or the appointment of an administrative receiver;
 - " office copy ", in relation to Scotland, means a copy certified by the clerk of court;
 - " preferential debt " means a debt listed in Part I of Schedule 4 to this Act and " preferential creditor " shall be construed accordingly;
 - " prescribed " means prescribed by the rules ;
 - " receiver ", in the expression " receiver or manager ", does not include a receiver appointed under section 467 of the 1985 Act;
 - " retention of title agreement " means an agreement for the sale of goods to a company, being an agreement—
 - (a) which does not constitute a charge on the goods; but
 - (b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods ;
 - " the rules " means rules under section 106 above ;
 - " 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 ;
 - " security " means—
 - (a) in relation to England and Wales, any mortgage, charge, lien or other security ;
 - (b) in relation to Scotland, any security (whether heritable or movable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off).
- (4) For the purposes of this Part a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution.
- (5) For the purposes of this Part a person is connected with a company if—
- (a) he is a director or shadow director of the company or an associate of such a director or shadow director; or

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- (b) he is an associate of the company.
- (6) For the purposes of this Part a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, shall be regarded as a member of the company, and references to a member or members shall be construed accordingly.
- (7) Where any provision of this Part provides that a person is liable to a daily default fine of any amount for continued contravention of any offence, that person shall be liable on a second or subsequent summary conviction of the offence to a fine of that amount for each day on which the contravention is continued (instead of to any other penalty specified in that provision).

109 Minor and consequential amendments of 1985 Act

- (1) The 1985 Act shall have effect with the amendments specified in Schedule 6 to this Act (being minor and consequential amendments relating to the disqualification of directors and others involved in the management of companies and the insolvency and winding up of companies).
- (2) In the 1985 Act references to general rules under section 663(1) or (2) of that Act shall have effect as references to rules under section 106 above.
- (3) In the 1985 Act " administrative receiver" has the same meaning as in this Part.