

*Status: Point in time view as at 15/09/2003.*

*Changes to legislation: Insolvency Act 1986, APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS is up to date with all changes known to be in force on or before 29 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE B1

#### ADMINISTRATION

##### Textual Amendments

- F1** Sch. B1 inserted (15.9.2003) by 2002 c. 40, ss. 248(2), 279, Sch. 16 (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

##### Modifications etc. (not altering text)

- C1** Sch. B1 applied in part (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, Sch. 20 Pts. 1-3; S.I. 2004/2575, art. 2(1), Sch. 1
- C1** Sch. B1 applied (with modifications) (1.7. 2005) by S.I. 1994/2421, art. 6(1), Sch. 2 (as amended (1.7.2005) by S.I. 2005/1516, arts. 3, 7, Sch. 1 (with art. 2))
- C1** Sch. B1: specified provisions applied (with modifications) (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 93(2)(3), {Sch. 10 Pts. 1, 2}; S.I. 2011/2329, art. 3 (with arts. 4, 5)

#### APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

##### *Power to appoint*

- 22 (1) A company may appoint an administrator.
- (2) The directors of a company may appoint an administrator.

##### Modifications etc. (not altering text)

- C1** Sch. B1 para. 22 restricted (5.10.2004) by Energy Act 2004 (c. 20), ss. 163, 198; S.I. 2004/2575, art. 2(1), Sch. 1

##### *Restrictions on power to appoint*

- 23 (1) This paragraph applies where an administrator of a company is appointed—
- (a) under paragraph 22, or
- (b) on an administration application made by the company or its directors.
- (2) An administrator of the company may not be appointed under paragraph 22 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.
- 24 (1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.

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- (2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—
- (a) the arrangement was made during a moratorium for the company under Schedule A1, and
  - (b) the arrangement ends prematurely (within the meaning of section 7B).
- (3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 22.
- 25 An administrator of a company may not be appointed under paragraph 22 if—
- (a) a petition for the winding up of the company has been presented and is not yet disposed of,
  - (b) an administration application has been made and is not yet disposed of, or
  - (c) an administrative receiver of the company is in office.

*Notice of intention to appoint*

- 26 (1) A person who proposes to make an appointment under paragraph 22 shall give at least five business days' written notice to—
- (a) any person who is or may be entitled to appoint an administrative receiver of the company, and
  - (b) any person who is or may be entitled to appoint an administrator of the company under paragraph 14.
- (2) A person who proposes to make an appointment under paragraph 22 shall also give such notice as may be prescribed to such other persons as may be prescribed.
- (3) A notice under this paragraph must—
- (a) identify the proposed administrator, and
  - (b) be in the prescribed form.
- 27 (1) A person who gives notice of intention to appoint under paragraph 26 shall file with the court as soon as is reasonably practicable a copy of—
- (a) the notice, and
  - (b) any document accompanying it.
- (2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—
- (a) that the company is or is likely to become unable to pay its debts,
  - (b) that the company is not in liquidation, and
  - (c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 23 to 25, and
  - (d) to such additional effect, and giving such information, as may be prescribed.
- (3) A statutory declaration under sub-paragraph (2) must—
- (a) be in the prescribed form, and
  - (b) be made during the prescribed period.
- (4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and

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- (b) which he does not reasonably believe to be true.
- 28 (1) An appointment may not be made under paragraph 22 unless the person who makes the appointment has complied with any requirement of paragraphs 26 and 27 and—
- (a) the period of notice specified in paragraph 26(1) has expired, or
  - (b) each person to whom notice has been given under paragraph 26(1) has consented in writing to the making of the appointment.
- (2) An appointment may not be made under paragraph 22 after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1).

#### *Notice of appointment*

- 29 (1) A person who appoints an administrator of a company under paragraph 22 shall file with the court—
- (a) a notice of appointment, and
  - (b) such other documents as may be prescribed.
- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
- (a) that the person is entitled to make an appointment under paragraph 22,
  - (b) that the appointment is in accordance with this Schedule, and
  - (c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.
- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
- (a) that he consents to the appointment,
  - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
  - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.
- (7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and
  - (b) which he does not reasonably believe to be true.
- 30 In a case in which no person is entitled to notice of intention to appoint under paragraph 26(1) (and paragraph 28 therefore does not apply)—
- (a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 27(2), and
  - (b) paragraph 29(2)(c) shall not apply.

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### *Commencement of appointment*

- 31 The appointment of an administrator under paragraph 22 takes effect when the requirements of paragraph 29 are satisfied.
- 32 A person who appoints an administrator under paragraph 22—
- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 29 are satisfied, and
  - (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).
- 33 If before the requirements of paragraph 29 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 14—
- (a) the appointment under paragraph 22 shall not take effect, and
  - (b) paragraph 32 shall not apply.

### *Invalid appointment: indemnity*

- 34 (1) This paragraph applies where—
- (a) a person purports to appoint an administrator under paragraph 22, and
  - (b) the appointment is discovered to be invalid.
- (2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.]

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