

Status: Point in time view as at 26/06/2020.

Changes to legislation: Insolvency Act 1986, Cross Heading: Property subject to floating charge is up to date with all changes known to be in force on or before 30 May 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)



Insolvency Act 1986

1986 CHAPTER 45

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

CHAPTER VIII

PROVISIONS OF GENERAL APPLICATION IN WINDING UP

[^{F1}Property subject to floating charge]

Textual Amendments

F1 S. 176A and preceding cross-heading inserted (15.9.2003) by 2002 c. 40, ss. 252, 279 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2002/2332, art. 2))

[^{F2}176ZA^{F2}Payment of expenses of winding up (England and Wales)]

- (1) The expenses of winding up in England and Wales, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.
- (2) In subsection (1)—
 - (a) the reference to assets of the company available for payment of general creditors does not include any amount made available under section 176A(2)(a);
 - (b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—
 - (i) the holders of debentures secured by, or holders of, the floating charge, and

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- (ii) any preferential creditors entitled to be paid out of that property in priority to them.
- (3) Provision may be made by rules restricting the application of subsection (1), in such circumstances as may be prescribed, to expenses authorised or approved—
 - (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or
 - (b) by the court.
- (4) References in this section to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.]

Textual Amendments

F2 S. 176ZA inserted (20.1.2007 for specified purposes, otherwise 6.4.2008) by [Companies Act 2006](#) (c. 46), **ss. 1282(1)**, 1300(2); S.I. 2006/3428, **art. 3(3)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); S.I. 2007/3495, arts. 2(2), **3(1)(v)** (with Sch. 4 para. 43)

Modifications etc. (not altering text)

- C1** S. 176ZA applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2
- C2** S. 176ZA applied by S.I. 1999/2979 reg. 14(5)(a)(i) (as substituted (1.10.2009) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009](#) (S.I. 2009/1972), **reg. 4(d)(ii)**)
- C3** S. 176ZA excluded by S.I. 2003/3226, **reg. 10(2B)** (as inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010](#) (S.I. 2010/2993), **reg. 4(8)(a)**)

[^{F3}176ZB] Application of proceeds of office-holder claims

- (1) This section applies where—
 - (a) there is a floating charge (whether created before or after the coming into force of this section) which relates to property of a company which—
 - (i) is in administration, or
 - (ii) has gone into liquidation; and
 - (b) the administrator or the liquidator (referred to in this section as “the office-holder”) has—
 - (i) brought a claim under any provision mentioned in subsection (3), or
 - (ii) made an assignment (or, in Scotland, assignation) in relation to a right of action under any such provision under section 246ZD.
- (2) The proceeds of the claim or assignment (or, in Scotland, assignation) are not to be treated as part of the company's net property, that is to say the amount of its property which would be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (3) The provisions are—
 - (a) section 213 or 246ZA (fraudulent trading);
 - (b) section 214 or 246ZB (wrongful trading);
 - (c) section 238 (transactions at an undervalue (England and Wales));
 - (d) section 239 (preferences (England and Wales));

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- (e) section 242 (gratuitous alienations (Scotland));
 - (f) section 243 (unfair preferences (Scotland));
 - (g) section 244 (extortionate credit transactions).
- (4) Subsection (2) does not apply to a company if or in so far as it is disapplied by—
- (a) a voluntary arrangement in respect of the company, or
 - (b) a compromise or arrangement agreed under Part 26 [^{F4}or 26A] of the Companies Act 2006 (arrangements and reconstructions).]

Textual Amendments

- F3** S. 176ZB inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 119, 164\(1\)](#); [S.I. 2015/1689, reg. 2\(j\)](#) (with [Sch. para. 17](#))
- F4** Words in s. 176ZB(4)(b) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 9 para. 6\(2\)](#) (with [ss. 2\(2\), 5\(2\)](#))

Modifications etc. (not altering text)

- C4** S. 176ZB applied (with modifications) by [S.I. 2014/229, art. 2A](#) (as inserted (7.4.2017) by [The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(Consequential Amendments and Transitional Provisions\) Regulations 2017 \(S.I. 2017/400\), regs. 1\(2\), 12\(2\)](#))
- C5** S. 176ZB applied (with modifications) by [2009 c. 1, s. 103](#) (as amended (7.4.2017) by [The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(Consequential Amendments and Transitional Provisions\) Regulations 2017 \(S.I. 2017/400\), regs. 1\(2\), 5\(4\)](#))
- C6** S. 176ZB applied (with modifications) by [2009 c. 1, s. 145 Table 2](#) (as amended (7.4.2017) by [The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(Consequential Amendments and Transitional Provisions\) Regulations 2017 \(S.I. 2017/400\), regs. 1\(2\), 5\(10\)](#))

[^{F5}176A Share of assets for unsecured creditors

- (1) This section applies where a floating charge relates to property of a company—
- (a) which has gone into liquidation,
 - (b) which is in administration,
 - (c) of which there is a provisional liquidator, or
 - (d) of which there is a receiver.
- (2) The liquidator, administrator or receiver—
- (a) shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts, and
 - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Subsection (2) shall not apply to a company if—
- (a) the company's net property is less than the prescribed minimum, and
 - (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.
- (4) Subsection (2) shall also not apply to a company if or in so far as it is disapplied by—
- (a) a voluntary arrangement in respect of the company, or

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- (b) a compromise or arrangement agreed under [^{F6}Part 26 [^{F7}or 26A] of the Companies Act 2006 (arrangements and reconstructions)].
- (5) Subsection (2) shall also not apply to a company if—
- (a) the liquidator, administrator or receiver applies to the court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
- (b) the court orders that subsection (2) shall not apply.
- (6) In subsections (2) and (3) a company’s net property is the amount of its property which would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (7) An order under subsection (2) prescribing part of a company’s net property may, in particular, provide for its calculation—
- (a) as a percentage of the company’s net property, or
- (b) as an aggregate of different percentages of different parts of the company’s net property.
- (8) An order under this section—
- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment pursuant to a resolution of either House of Parliament.
- (9) In this section—
- “floating charge” means a charge which is a floating charge on its creation and which is created after the first order under subsection (2)(a) comes into force, and
- “prescribed” means prescribed by order by the Secretary of State.
- (10) An order under this section may include transitional or incidental provision.]

Textual Amendments

- F5** S. 176A and preceding cross-heading inserted (15.9.2003) by 2002 c. 40, ss. 252, 279 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2002/2332, art. 2))
- F6** Words in s. 176A(4)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), Sch. 1 para. 103 (with arts. 6, 11, 12)
- F7** Words in s. 176A(4)(b) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), Sch. 9 para. 6(3) (with ss. 2(2), 5(2))

Modifications etc. (not altering text)

- C7** S. 176A excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, Sch. para. 2(4)
- C8** S. 176A excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), reg. 10(3)
- C9** S. 176A modified (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), reg. 21(7) (with reg. 3) (as modified (10.8.2005) by S.I. 2005/1998, regs. 2(3), 40(1)-(4))
- C10** S. 176A applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 103, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2
- C11** S. 176A applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 145, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 3

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- C12** S. 176A applied by S.I. 1999/2979 reg. 14(5)(a)(i) (as substituted (1.10.2009) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), [reg. 4\(d\)\(ii\)](#))
- C13** S. 176A applied (with modifications) (6.4.2014) by [The Industrial and Provident Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) Order 2014 \(S.I. 2014/229\)](#), arts. 1, 3

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