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]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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Changes to legislation: *Insolvency Act 1986, Section 176A is up to date with all changes known to be in force on or before 31 July 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)*

(b) a compromise or arrangement agreed under **[**[F2]Part 26 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

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 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)

Modifications etc. (not altering text)

C1 S. 176A excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(4)**

C2 S. 176A excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 10(3)**

C3 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))

C4 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

C5 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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C6 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)**)

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