



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART III

#### RECEIVERSHIP

#### CHAPTER II

##### RECEIVERS (SCOTLAND)

#### **61 Disposal of interest in property.**

- (1) Where the receiver sells or disposes, or is desirous of selling or disposing, or any property or interest in property of the company which is subject to the floating charge by virtue of which the receiver was appointed and which is—
- (a) subject to any security or interest of, or burden or encumbrance in favour of, a creditor the ranking of which is prior to, or *pari passu* with, or postponed to the floating charge, or
  - (b) property or an interest in property affected or attached by effectual diligence executed by any person,

and the receiver is unable to obtain the consent of such creditor or, as the case may be, such person to such a sale or disposal, the receiver may apply to the court for authority to sell or dispose of the property or interest in property free of such security, interest, burden, encumbrance or diligence.

[<sup>F1</sup>(1A) For the purposes of subsection (1) above, an inhibition which takes effect after the creation of the floating charge by virtue of which the receiver was appointed is not an effectual diligence.]

- (2) Subject to the next subsection, on such an application the court may, if it thinks fit, authorise the sale or disposal of the property or interest in question free of such security, interest, burden, encumbrance or diligence, and such authorisation may be on such terms or conditions as the court thinks fit.

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*Changes to legislation: Insolvency Act 1986, Section 61 is up to date with all changes known to be in force on or before 23 June 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) View outstanding changes*

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- (3) In the case of an application where a fixed security over the property or interest in question which ranks prior to the floating charge has not been met or provided for in full, the court shall not authorise the sale or disposal of the property or interest in question unless it is satisfied that the sale or disposal would be like to provide a more advantageous realisation of the company's assets than would otherwise be effected.
- (4) It shall be a condition of an authorisation to which subsection (3) applies that—
- (a) the net proceeds of the disposal, and
  - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or interest in the open market by a willing seller, such sums as may be required to make good the deficiency,
- shall be applied towards discharging the sums secured by the fixed security.
- (5) Where a condition imposed in pursuance of subsection (4) relates to two or more such fixed securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those fixed securities in the order of their priorities.
- (6) A copy of an authorisation under subsection (2) <sup>F2</sup> . . . shall, within 14 days of the granting of the authorisation, be sent by the receiver to the registrar of companies.
- (7) If the receiver without reasonable excuse fails to comply with subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.
- (8) Where any sale or disposal is effected in accordance with the authorisation of the court under subsection (2), the receiver shall grant to the purchaser or disponee an appropriate document of transfer or conveyance of the property or interest in question, and that document has the effect, or, where recording, intimation or registration of that document is a legal requirement for completion of title to the property or interest, then that recording, intimation or registration (as the case may be) has the effect, of—
- (a) disencumbering the property or interest of the security, interest, burden or encumbrance affecting it, and
  - (b) freeing the property or interest from the diligence executed upon it.
- (9) Nothing in this section prejudices the right of any creditor of the company to rank for his debt in the winding up of the company.

#### Textual Amendments

- F1** S. 61(1A) inserted (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 155(2), 227(3)** (with s. 223); S.S.I. 2009/67, **art. 3(a)** (with arts. 5, 6); as amended by S.S.I. 2011/31, **art. 5**
- F2** Words in s. 61(6) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 74(6)} (with art. 10, Sch. 1 para. 84)

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

- C1** S. 61 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), **ss. 154, 155, 175(3)(b)**; S.I. 1991/878, **art. 2, Sch. .**
- C2** S. 61 excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(4)(b)**
- C3** S. 61 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, **reg. 4(1), Sch. 2**

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- C4** S. 61 applied (with modifications) (4.1.2024) by S.I. 2021/716, Sch. 1 para. 3 (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), regs. 1(2), **20**)
- C5** S. 61(6) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)**; S.I. 1998/3178, **art. 2** (as amended (28.6.2016) by [The Building Societies \(Floating Charges and Other Provisions\) Order 2016](#) (S.I. 2016/679), arts. 1(1), **6**)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by [S.I. 2017/1119 Sch. 3 para. 1](#)
- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)