



Insolvency Act 1986

1986 CHAPTER 45

The First Group of Parts Company Insolvency ; Companies Winding Up

PART II

ADMINISTRATION ORDERS

Making etc. of administration order

8 Power of court to make order

- (1) Subject to this section, if the court—
- (a) is satisfied that a company is or is likely to become unable to pay its debts (within the meaning given to that expression by section 123 of this Act), and
 - (b) considers that the making of an order under this section would be likely to achieve one or more of the purposes mentioned below,
- the court may make an administration order in relation to the company.
- (2) An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a person (" the administrator ") appointed for the purpose by the court.
- (3) The purposes for whose achievement an administration order may be made are—
- (a) the survival of the company, and the whole or any part of its undertaking, as a going concern;
 - (b) the approval of a voluntary arrangement under Part 1;
 - (c) the sanctioning under section 425 of the Companies Act of a compromise or arrangement between the company and any such persons as are mentioned in that section; and
 - (d) a more advantageous realisation of the company's assets than would be effected on a winding up;
- and the order shall specify the purpose or purposes for which it is made.

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- (4) An administration order shall not be made in relation to a company after it has gone into liquidation, nor where it is—
- (a) an insurance company within the meaning of the Insurance Companies Act 1982, or
 - (b) a recognised bank or licensed institution within the meaning of the Banking Act 1979, or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution.

9 Application for order

- (1) An application to the court for an administration order shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any contingent or prospective creditor or creditors), or by all or any of those parties, together or separately.
- (2) Where a petition is presented to the court—
- (a) notice of the petition shall be given forthwith to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company, and to such other persons as may be prescribed, and
 - (b) the petition shall not be withdrawn except with the leave of the court
- (3) Where the court is satisfied that there is an administrative receiver of the company, the court shall dismiss the petition unless it is also satisfied either—
- (a) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order, or
 - (b) that, if an administration order were made, any security by virtue of which the receiver was appointed would—
 - (i) be liable to be released or discharged under sections 238 to 240 in Part VI (transactions at an undervalue and preferences),
 - (ii) be avoided under section 245 in that Part (avoidance of floating charges), or
 - (iii) be challengeable under section 242 (gratuitous alienations) or 243 (unfair preferences) in that Part, or under any rule of law in Scotland.
- (4) Subject to subsection (3), on hearing a petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (5) Without prejudice to the generality of subsection (4), an interim order under that subsection may restrict the exercise of any powers of the directors or of the company (whether by reference to the consent of the court or of a person qualified to act as an insolvency practitioner in relation to the company, or otherwise).

10 Effect of application

- (1) During the period beginning with the presentation of a petition for an administration order and ending with the making of such an order or the dismissal of the petition—
- (a) no resolution may be passed or order made for the winding up of the company ;
 - (b) no steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase

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- agreement, except with the leave of the court and subject to such terms as the court may impose; and
- (c) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as aforesaid.
- (2) Nothing in subsection (1) requires the leave of the court—
- (a) for the presentation of a petition for the winding up of the company,
- (b) for the appointment of an administrative receiver of the company, or
- (c) for the carrying out by such a receiver (whenever appointed) of any of his functions.
- (3) Where—
- (a) a petition for an administration order is presented at a time when there is an administrative receiver of the company, and
- (b) the person by or on whose behalf the receiver was appointed has not consented to the making of the order,
- the period mentioned in subsection (1) is deemed not to begin unless and until that person so consents.
- (4) References in this section and the next to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.
- (5) In the application of this section and the next to Scotland, references to execution being commenced or continued include references to diligence being carried out or continued, and references to distress being levied shall be omitted.

11 Effect of order

- (1) On the making of an administration order—
- (a) any petition for the winding up of the company shall be dismissed, and
- (b) any administrative receiver of the company shall vacate office.
- (2) Where an administration order has been made, any receiver of part of the company's property shall vacate office on being required to do so by the administrator.
- (3) During the period for which an administration order is in force—
- (a) no resolution may be passed or order made for the winding up of the company;
- (b) no administrative receiver of the company may be appointed;
- (c) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose; and
- (d) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as aforesaid.
- (4) Where at any time an administrative receiver of the company has vacated office under subsection (1)(b), or a receiver of part of the company's property has vacated office under subsection (2)—

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- (a) his remuneration and any expenses properly incurred by him, and
 - (b) any indemnity to which he is entitled out of the assets of the company,
- shall be charged on and (subject to subsection (3) above) paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.
- (5) Neither an administrative receiver who vacates office under subsection (1)(b) nor a receiver who vacates office under subsection (2) is required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by section 40 or 59 of this Act (duty to pay preferential creditors).

12 Notification of order

- (1) Every invoice, order for goods or business letter which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.
- (2) If default is made in complying with this section, the company and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, is liable to a fine.