



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.

Administrators

13 Appointment of administrator

- (1) The administrator of a company shall be appointed either by the administration order or by an order under the next subsection.
- (2) If a vacancy occurs by death, resignation or otherwise in the office of the administrator, the court may by order fill the vacancy.
- (3) An application for an order under subsection (2) may be made—
- (a) by any continuing administrator of the company; or
 - (b) where there is no such administrator, by a creditors' committee established under section 26 below; or
 - (c) where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company.

14 General powers

- (1) The administrator of a company—
- (a) may do all such things as may be necessary for the management of the affairs, business and property of the company, and
 - (b) without prejudice to the generality of paragraph (a), has the powers specified in Schedule 1 to this Act;
- and in the application of that Schedule to the administrator of a company the words " he " and " him " refer to the administrator.
- (2) The administrator also has power—

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- (a) to remove any director of the company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise, and
 - (b) to call any meeting of the members or creditors of the company.
- (3) The administrator may apply to the court for directions in relation to any particular matter arising in connection with the carrying out of his functions.
- (4) Any power conferred on the company or its officers, whether by this Act or the Companies Act or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.
- (5) In exercising his powers the administrator is deemed to act as the company's agent.
- (6) A person dealing with the administrator in good faith and for value is not concerned to inquire whether the administrator is acting within his powers.

15 Power to deal with charged property, etc.

- (1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies as if the property were not subject to the security.
- (2) Where, on an application by the administrator, the court is satisfied that the disposal (with or without other assets) of—
 - (a) any property of the company subject to a security to which this subsection applies, or
 - (b) any goods in the possession of the company under a hire purchase agreement, would be likely to promote the purpose or one or more of the purposes specified in the administration order, the court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.
- (3) Subsection (1) applies to any security which, as created, was a floating charge; and subsection (2) applies to any other security.
- (4) Where property is disposed of under subsection (1), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.
- (5) It shall be a condition of an order under subsection (2) 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 goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.
- (6) Where a condition imposed in pursuance of subsection (5) relates to two or more securities, that condition requires the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be

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applied towards discharging the sums secured by those securities in the order of their priorities.

- (7) An office copy of an order under subsection (2) shall, within 14 days after the making of the order, be sent by the administrator to the registrar of companies.
- (8) If the administrator without reasonable excuse fails to comply with subsection (7), he is liable to a fine and, for continued contravention, to a daily default fine.
- (9) References in this section to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

16 Operation of s. 15 in Scotland

- (1) Where property is disposed of under section 15 in its application to Scotland, the administrator shall grant to the donee an appropriate document of transfer or conveyance of the property, and—
 - (a) that document, or
 - (b) where any recording, intimation or registration of the document is a legal requirement for completion of title to the property, that recording, intimation or registration,has the effect of disencumbering the property of or, as the case may be, freeing the property from the security.
- (2) Where goods in the possession of the company under a hire-purchase agreement, conditional sale agreement, chattel leasing agreement or retention of title agreement are disposed of under section 15 in its application to Scotland, the disposal has the effect of extinguishing, as against the donee, all rights of the owner of the goods under the agreement.

17 General duties

- (1) The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.
- (2) The administrator shall manage the affairs, business and property of the company—
 - (a) at any time before proposals have been approved (with or without modifications) under section 24 below, in accordance with any directions given by the court, and
 - (b) at any time after proposals have been so approved, in accordance with those proposals as from time to time revised, whether by him or a predecessor of his.
- (3) The administrator shall summon a meeting of the company's creditors if—
 - (a) he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors, or
 - (b) he is directed to do so by the court.

18 Discharge or variation of administration order

- (1) The administrator of a company may at any time apply to the court for the administration order to be discharged, or to be varied so as to specify an additional purpose.

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- (2) The administrator shall make an application under this section if—
 - (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement, or
 - (b) he is required to do so by a meeting of the company's creditors summoned for the purpose in accordance with the rules.
- (3) On the hearing of an application under this section, the court may by order discharge or vary the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.
- (4) Where the administration order is discharged or varied the administrator shall, within 14 days after the making of the order effecting the discharge or variation, send an office copy of that order to the registrar of companies.
- (5) If the administrator without reasonable excuse fails to comply with subsection (4), he is liable to a fine and, for continued contravention, to a daily default fine.

19 Vacation of office

- (1) The administrator of a company may at any time be removed from office by order of the court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (2) The administrator shall vacate office if—
 - (a) he ceases to be qualified to act as an insolvency practitioner in relation to the company, or
 - (b) the administration order is discharged.
- (3) Where at any time a person ceases to be administrator, the next two subsections apply.
- (4) His remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security to which section 15(1) then applies.
- (5) Any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into or contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall be charged on and paid out of any such property as is mentioned in subsection (4) in priority to any charge arising under that subsection.

For this purpose, the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment

20 Release of administrator

- (1) A person who has ceased to be the administrator of a company has his release with effect from the following time, that is to say—
 - (a) in the case of a person who has died, the time at which notice is given to the court in accordance with the rules that he has ceased to hold office;
 - (b) in any other case, such time as the court may determine.

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- (2) Where a person has his release under this section, he is, with effect from the time specified above, discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator.
- (3) However, nothing in this section prevents the exercise, in relation to a person who has had his release as above, of the court's powers under section 212 in Chapter X of Part IV (summary remedy against delinquent directors, liquidators, etc.).

Ascertainment and investigation of company's affairs

21 Information to be given by administrator

- (1) Where an administration order has been made, the administrator shall—
 - (a) forthwith send to the company and publish in the prescribed manner a notice of the order, and
 - (b) within 28 days after the making of the order, unless the court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of their addresses).
- (2) Where an administration order has been made, the administrator shall also, within 14 days after the making of the order, send an office copy of the order to the registrar of companies and to such other persons as may be prescribed.
- (3) If the administrator without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

22 Statement of affairs to be submitted to administrator

- (1) Where an administration order has been made, the administrator shall forthwith require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) The statement shall be verified by affidavit by the persons required to submit it and shall show—
 - (a) particulars of the company's assets, debts and liabilities ;
 - (b) the names and addresses of its creditors ;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) are—
 - (a) those who are or have been officers of the company ;
 - (b) those who have taken part in the company's formation at any time within one year before the date of the administration order;
 - (c) those who are in the company's employment or have been in its employment within that year, and are in the administrator's opinion capable of giving the information required;
 - (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

In this subsection " employment " includes employment under a contract for services.

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- (4) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrator.
- (5) The administrator, if he thinks fit, may—
 - (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
 - (b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned ;and where the administrator has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine

Administrator's proposals

23 Statement of proposals

- (1) Where an administration order has been made, the administrator shall, within 3 months (or such longer period as the court may allow) after the making of the order—
 - (a) send to the registrar of companies and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving the purpose or purposes specified in the order, and
 - (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice.
- (2) The administrator shall also, within 3 months (or such longer period as the court may allow) after the making of the order, either—
 - (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company, or
 - (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.
- (3) If the administrator without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

24 Consideration of proposals by creditors' meeting

- (1) A meeting of creditors summoned under section 23 shall decide whether to approve the administrator's proposals.
- (2) The meeting may approve the proposals with modifications, but shall not do so unless the administrator consents to each modification.
- (3) Subject as above, the meeting shall be conducted in accordance with the rules.

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- (4) After the conclusion of the meeting in accordance with the rules, the administrator shall report the result of the meeting to the court and shall give notice of that result to the registrar of companies and to such persons as may be prescribed.
- (5) If a report is given to the court under subsection (4) that the meeting has declined to approve the administrator's proposals (with or without modifications), the court may by order discharge the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit
- (6) Where the administration order is discharged, the administrator shall, within 14 days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies.
- (7) If the administrator without reasonable excuse fails to comply with subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.

25 Approval of substantial revisions

- (1) This section applies where—
 - (a) proposals have been approved (with or without modifications) under section 24, and
 - (b) the administrator proposes to make revisions of those proposals which appear to him substantial.
- (2) The administrator shall—
 - (a) send to all creditors of the company (so far as he is aware of their addresses) a statement in the prescribed form of his proposed revisions, and
 - (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice;and he shall not make the proposed revisions unless they are approved by the meeting.
- (3) The administrator shall also either—
 - (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company, or
 - (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.
- (4) The meeting of creditors may approve the proposed revisions with modifications, but shall not do so unless the administrator consents to each modification.
- (5) Subject as above, the meeting shall be conducted in accordance with the rules.
- (6) After the conclusion of the meeting in accordance with the rules, the administrator shall give notice of the result of the meeting to the registrar of companies and to such persons as may be prescribed.

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Miscellaneous

26 Creditors' committee

- (1) Where a meeting of creditors summoned under section 23 has approved the administrator's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Act.
- (2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrator to attend before it at any reasonable time and furnish it with such information relating to the carrying out of his functions as it may reasonably require.

27 Protection of interests of creditors and members

- (1) At any time when an administration order is in force, a creditor or member of the company may apply to the court by petition for an order under this section on the ground—
 - (a) that the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least himself), or
 - (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial.
- (2) On an application for an order under this section the court may, subject as follows, make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (3) An order under this section shall not prejudice or prevent—
 - (a) the implementation of a voluntary arrangement approved under section 4 in Part I, or any compromise or arrangement sanctioned under section 425 of the Companies Act; or
 - (b) where the application for the order was made more than 28 days after the approval of any proposals or revised proposals under section 24 or 25, the implementation of those proposals or revised proposals.
- (4) Subject as above, an order under this section may in particular—
 - (a) regulate the future management by the administrator of the company's affairs, business and property;
 - (b) require the administrator to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained he has omitted to do;
 - (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct;
 - (d) discharge the administration order and make such consequential provision as the court thinks fit.
- (5) Nothing in section 15 or 16 is to be taken as prejudicing applications to the court under this section.

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- (6) Where the administration order is discharged, the administrator shall, within 14 days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies; and if without reasonable excuse he fails to comply with this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.