



# Companies Act 1985

## 1985 CHAPTER 6

### PART XVII

#### PROTECTION OF COMPANY'S MEMBERS AGAINST UNFAIR PREJUDICE

#### 459 Order on application of company member.

- (1) A member of a company may apply to the court by petition for an order under this Part on the ground that the company's affairs are being or have been conducted in a manner which is [<sup>F1</sup>unfairly prejudicial to the interests of its members generally or of some part of its members] (including at least himself) or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.
- (2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law, as those provisions apply to a member of the company; and references to a member or members are to be construed accordingly.
- [<sup>F2</sup>(3) In this section (and so far as applicable for the purposes of this section, in section 461(2)) 'company' means any company within the meaning of this Act or any company which is not such a company but is a statutory water company within the meaning of [<sup>F3</sup>the Statutory Water Companies Act 1991].]

#### Textual Amendments

- F1** Words in s. 459(1) substituted (4.2.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 145, 213(2), **Sch. 19 para. 11(a)**
- F2** S. 459(3) inserted (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 71(3)** (with 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F3** Words in s. 459(3) substituted (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130) ss. 2(1), 4(2), Sch. 1 para. 40(2)

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*Changes to legislation: Companies Act 1985, Part XVII is up to date with all changes known to be in force on or before 01 August 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)*

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

**C1** S. 459 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**460 Order on application of Secretary of State.**

[<sup>F4</sup>(1) If it appears to the Secretary of State that—

- (a) the affairs of a company to which this subsection applies are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members, or
- (b) any actual or proposed act or omission of a company to which this subsection applies, including an act or omission on its behalf, is or would be so prejudicial,

he may himself (in addition to or instead of presenting a petition for the winding up of the company) apply to the court by petition for an order under this Part.

(1A) Subsection (1) applies to a company in respect of which—

- (a) the Secretary of State has received a report under section 437 of this Act;
- (b) the Secretary of State has exercised his powers under section 447 or 448 of this Act;
- (c) the Secretary of State or the Financial Services Authority has exercised his or its powers under Part 11 of the Financial Services and Markets Act 2000; or
- (d) the Secretary of State has received a report from an investigator appointed by him or the Financial Services Authority under that Part.]

(2) In this section (and, so far as applicable for its purposes, in the section next following) “company” means any body corporate which is liable to be wound up under this Act.

**Textual Amendments**

**F4** S. 460(1)(1A) substituted (1.12.2001) for s. 460(1) by S.I. 2001/3649, arts. 1, 26

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

**C2** S. 460 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I (as amended (4.3.2004) by S.I. 2004/355, art. 9(3))

**C3** S. 460(2) amended (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), Sch. 1 para. 40(1)

**461 Provisions as to petitions and orders under this Part.**

(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court’s order may—

- (a) regulate the conduct of the company’s affairs in the future,
- (b) require the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do,
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct,

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- (d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.
- (3) If an order under this Part requires the company not to make any, or any specified, alteration in the memorandum or articles, the company does not then have power without leave of the court to make any such alteration in breach of that requirement.
- (4) Any alteration in the company's memorandum or articles made by virtue of an order under this Part is of the same effect as if duly made by resolution of the company, and the provisions of this Act apply to the memorandum or articles as so altered accordingly.
- (5) An office copy of an order under this Part altering, or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the court may allow, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- [<sup>F5</sup>(6) The power under [<sup>F6</sup>section 411 of the Insolvency Act] to make rules shall, so far as it relates to a winding-up petition, apply for the purposes of a petition under this Part.]

#### Textual Amendments

- F5** S. 461(6) substituted (E.W.S.) by [Insolvency Act 1985 \(c. 65, SIF 27\)](#), s. 109, Sch. 6 para. 24, **Sch. 9 para. 9**
- F6** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**

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

- C4** S. 461 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4](#), **Sch. 2 Pt. I**

**Status:**

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