



# Companies Act 1985

## 1985 CHAPTER 6

### PART XVIII

#### FLOATING CHARGES AND RECEIVERS (SCOTLAND)

#### CHAPTER I

#### FLOATING CHARGES

#### 464 Ranking of floating charges.

- (1) Subject to subsection (2), the instrument creating a floating charge over all or any part of the company's property under section 462 may contain—
- (a) provisions prohibiting or restricting the creation of any fixed security or any other floating charge having priority over, or ranking *pari passu* with, the floating charge; or
  - (b) [<sup>F1</sup>with the consent of the holder of any subsisting floating charge or fixed security which would be adversely affected,] provisions regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over that property or any part of it.
- [<sup>F2</sup>(1A) Where an instrument creating a floating charge contains any such provision as is mentioned in subsection (1)(a), that provision shall be effective to confer priority on the floating charge over any fixed security or floating charge created after the date of the instrument.]
- (2) Where all or any part of the property of a company is subject both to a floating charge and to a fixed security arising by operation of law, the fixed security has priority over the floating charge.
- [<sup>F3</sup>(3) The order of ranking of the floating charge with any other subsisting or future floating charges or fixed securities over all or any part of the company's property is determined in accordance with the provisions of subsections (4) and (5) except where it is

*Status: Point in time view as at 03/07/1995. This version of this provision has been superseded.*

*Changes to legislation: Companies Act 1985, Section 464 is up to date with all changes known to be in force on or before 19 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)*

determined in accordance with any provision such as is mentioned in paragraph (a) or (b) of subsection (1).]

(4) Subject to the provisions of this section—

- (a) a fixed security, the right to which has been constituted as a real right before a floating charge has attached to all or any part of the property of the company, has priority of ranking over the floating charge;
- (b) floating charges rank with one another according to the time of registration in accordance with Chapter II of Part XII;
- (c) floating charges which have been received by the registrar for registration by the same postal delivery rank with one another equally.

(5) Where the holder of a floating charge over all or any part of the company's property which has been registered in accordance with Chapter II of Part XII has received intimation in writing of the subsequent registration in accordance with that Chapter of another floating charge over the same property or any part thereof, the preference in ranking of the first-mentioned floating charge is restricted to security for—

- (a) the holder's present advances;
- (b) future advances which he may be required to make under the instrument creating the floating charge or under any ancillary document;
- (c) interest due or to become due on all such advances; <sup>F4</sup> . . .
- (d) any expenses or outlays which may reasonably be incurred by the holder <sup>F5</sup>; and
- (e) (in the case of a floating charge to secure a contingent liability other than a liability arising under any further advances made from time to time) the maximum sum to which that contingent liability is capable of amounting whether or not it is contractually limited.]

(6) This section is subject to [<sup>F6</sup>Part XII and to][<sup>F7</sup>sections 175 and 176 of the Insolvency Act].

#### Textual Amendments

- F1** Words inserted (3.7.1995) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 140(2)(3)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 5)
- F2** S. 464(1A) inserted (3.7.1995) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 140(2)(4)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 6)
- F3** S. 464(3) substituted (3.7.1995) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 140(2)(5)**, 213(2); S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 7)
- F4** Word repealed (3.7.1995) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 212, 213(2), **Sch. 24**; S.I. 1995/1352, **art. 3(a)(c)**
- F5** S. 464(5)(e) and the word "and" immediately preceding it inserted (3.7.1995) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **s. 140(6)**; S.I. 1995/1352, **art. 3(a)** (with transitional provisions and savings in art. 8)
- F6** Words inserted (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 140(2)(7)**, 213(2)
- F7** Words substituted by virtue of [Insolvency Act 1985 \(c. 65, SIF 27\)](#), s. 109, **Sch. 6 para. 19** and [Insolvency Act 1986 \(c.45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**

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

- C1** S. 464 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4](#), **Sch. 2 Pt. I**
- C2** S. 464(1A) restricted (20.5.1995) by [S.I. 1995/1352](#), **art. 6**
- C3** S. 464(3) restricted (20.5.1995) by [S.I. 1995/1352](#), **art. 7**

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