



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XVIII

#### INTERPRETATION

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

- C1** Pt. XVIII (ss. 435-436) applied (1.12.1994) by S.I. 1994/2421, arts. 4(3)(f), 6(3)(f)  
Pt. XVIII (ss. 435-436) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, Sch. 7  
Pt. XVIII (ss. 435-436) applied (with modifications) (1.12.1997) by 1986 c. 53, Sch. 15A para. 1(2) (as inserted by 1997 c. 32, s. 39(2), Sch. 6); S.I. 1997/2668, art. 2, Sch. Pt. I(i)
- C2** Third Group of Parts (Pts. 12-19) applied to limited liability partnerships (with modifications) (E.W.S.) (6.4.2001) by S.I. 2001/1090, reg. 5, Schs. 3, 4

#### 435 Meaning of “associate”.

- (1) For the purposes of this Act any question whether a person is an associate of another person is to be determined in accordance with the following provisions of this section (any provision that a person is an associate of another person being taken to mean that they are associates of each other).
- (2) A person is an associate of an individual if that person is the individual’s husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual’s husband or wife.
- (3) A person is an associate of any person with whom he is in partnership, and of the husband or wife or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm.
- (4) A person is an associate of any person whom he employs or by whom he is employed.
- (5) A person in his capacity as trustee of a trust other than—

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- (a) a trust arising under any of the second Group of Parts or the <sup>M1</sup>Bankruptcy (Scotland) Act 1985, or
- (b) a pension scheme or an employees' share scheme (within the meaning of the Companies Act),

is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.

- (6) A company is an associate of another company—
- (a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other, or
  - (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.
- (7) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.
- (8) For the purposes of this section a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—
- (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child, and
  - (b) an illegitimate child as the legitimate child of his mother and reputed father;
- and references in this section to a husband or wife include a former husband or wife and a reputed husband or wife.
- (9) For the purposes of this section any director or other officer of a company is to be treated as employed by that company.
- (10) For the purposes of this section a person is to be taken as having control of a company if—
- (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, or
  - (b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company of or another company which has control of it;

and where two or more persons together satisfy either of the above conditions, they are to be taken as having control of the company.

- (11) In this section “company” includes any body corporate (whether incorporated in Great Britain or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company have effect with any necessary modifications.

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

C3 S. 435 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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- S. 435 applied by Social Security Pensions Act 1975 (c. 60, SIF 113:1), **s. 57A(4)** (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), s. 14, **Sch. 4 Pt. I para. 3**)
- S. 435 applied by Social Security Pensions Act 1975 (c. 60, SIF 113:1), **s. 57C(4)** (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), s. 14, **Sch. 4 Pt. I para. 1**)
- S. 435 applied (7.2.1994) by 1993 c. 48, **ss. 112(4), 119(4)** (with s. 6(8)); S.I. 1994/86, **art. 2**
- S. 435 applied (6.4.1997) by 1995 c. 26, **s. 123(1)** (with s. 121(5)); S.I. 1997/664, **art. 2(3), Sch. Pt. II** (with arts. 3-14)
- S. 435 applied (1.10.2000) by S.I. 2000/1403, **reg. 1**
- S. 435 applied (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 38(10)(b), 51(3)(b), 53(6)(b), 322(1)** (with s. 313); S.I. 2005/275, **art. 2(7), Sch. Pt. 7** (subject to art. 2(12))
- C4** S. 435: power to apply (with modifications) conferred (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 57, 322(1)** (with s. 313); S.I. 2005/275, **art. 2(7), Sch. Pt. 3** (subject to art. 2(12))

#### Marginal Citations

**M1** 1985 c. 66.

### 436 Expressions used generally.

In this Act, except in so far as the context otherwise requires (and subject to Parts VII and XI)—

“the appointed day” means the day of which this Act comes into force under section 443;

“associate” has the meaning given by section 435;

“business” includes a trade or profession;

“the Companies Act” means the <sup>M2</sup>Companies Act 1985;

“conditional sale agreement” and “hire-purchase agreement” have the same meanings as in the <sup>M3</sup>Consumer Credit Act 1974;

“modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

“property” includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

“records” includes computer records and other non-documentary records;

“subordinate legislation” has the same meaning as in the <sup>M4</sup>Interpretation Act 1978; and

“transaction” includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

[<sup>F1</sup>“agricultural charge” has the same meaning as in the Agricultural Credits Act 1928 <sup>F2</sup>;

“agricultural receiver” means a receiver appointed under an agricultural charge;

“corporate member” means an insolvent member which is a company;

“the court”, in relation to an insolvent partnership, means the court which has jurisdiction to wind up the partnership;

“individual member” means an insolvent member who is an individual;

“insolvency order” means—

(a) in the case of an insolvent partnership or a corporate member, a winding-up order; and

(b) in the case of an individual member, a bankruptcy order;

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“insolvency petition” means, in the case of a petition presented to the court—

- (a) against a corporate member, a petition for its winding up by the court;
- (b) against an individual member, a petition for a bankruptcy order to be made against that individual,

where the petition is presented in conjunction with a petition for the winding up of the partnership by the court as an unregistered company under the Act;

“insolvency proceedings” means any proceedings under the Act, this Order or the Insolvency Rules 1986<sup>F3</sup>

“insolvent member” means a member of an insolvent partnership, against whom an insolvency petition is being or has been presented;

“joint bankruptcy petition” means a petition by virtue of article 11 of this Order;

“joint debt” means a debt of an insolvent partnership in respect of which an order is made by virtue of Part IV or V of this Order;

“joint estate” means the partnership property of an insolvent partnership in respect of which an order is made by virtue of Part IV or V of this Order;

“joint expenses” means expenses incurred in the winding up of an insolvent partnership or in the winding up of the business of an insolvent partnership and the administration of its property;

“limited partner” has the same meaning as in the Limited Partnerships Act 1907<sup>F4</sup>;

“member” means a member of a partnership and any person who is liable as a partner within the meaning of section 14 of the Partnership Act 1890<sup>F5</sup>;

“officer”, in relation to an insolvent partnership, means—

- (a) a member; or
- (b) a person who has management or control of the partnership business;

“partnership property” has the same meaning as in the Partnership Act 1890;

“postponed debt” means a debt the payment of which is postponed by or under any provision of the Act or of any other enactment;

“responsible insolvency practitioner” means—

- (a) in winding up, the liquidator of an insolvent partnership or corporate member; and
- (b) in bankruptcy, the trustee of the estate of an individual member,

and in either case includes the official receiver when so acting;

“separate debt” means a debt for which a member of a partnership is liable, other than a joint debt;

“separate estate” means the property of an insolvent member against whom an insolvency order has been made;

“separate expenses” means expenses incurred in the winding up of a corporate member, or in the bankruptcy of an individual member; and

“trustee of the partnership” means a person authorised by order made by virtue of article 11 of this Order to wind up the business of an insolvent partnership and to administer its property.]

#### Textual Amendments

**F1** S. 436(1): definitions added (1.12.1994) by S.I. 1994/2421, art. 2(1)(2)

**F2** 1928 c.43.

**F3** S.I. 1986/1925, amended by S.I. 1987/1919, S.I. 1989/397, S.I. 1991/495 and S.I. 1993/602.

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**F4** 1907 c.24.

**F5** 1890 c.39.

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

**C5** S. 436 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

**C6** S. 436 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

**C7** S. 436 modified (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

#### Marginal Citations

**M2** 1985 c. 6.

**M3** 1974 c. 39.

**M4** 1978 c. 30.

VALID FROM 31/05/2002

#### [<sup>F6</sup>436A Proceedings under EC Regulations: modified definition of property

In the application of this Act to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.]

#### Textual Amendments

**F6** S. 436A inserted (31.5.2002) by S.I. 2002/1240, **reg. 18**

VALID FROM 06/04/2010

#### [<sup>F7</sup>436B References to things in writing

- (1) A reference in this Act to a thing in writing includes that thing in electronic form.
- (2) Subsection (1) does not apply to the following provisions—
  - (a) section 53 (mode of appointment by holder of charge),
  - (b) section 67(2) (report by receiver),
  - (c) section 70(4) (reference to instrument creating a charge),
  - (d) section 111(2) (dissent from arrangement under s. 110),
  - (e) in the case of a winding up of a company registered in Scotland, section 111(4),
  - (f) section 123(1) (definition of inability to pay debts),
  - (g) section 198(3) (duties of sheriff principal as regards examination),
  - (h) section 222(1) (inability to pay debts: unpaid creditor for £750 or more), and
  - (i) section 223 (inability to pay debts: debt remaining unsatisfied after action brought).]

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#### Textual Amendments

- F7** S. 436B inserted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), **art. 4(1)**

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