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## SCHEDULES

### [<sup>F1</sup>SCHEDULE B1

#### ADMINISTRATION

##### Textual Amendments

- F1** Sch. B1 inserted (15.9.2003) by [2002 c. 40, ss. 248\(2\), 279, Sch. 16](#) (with s. 249(1)-(3)(6)); [S.I. 2003/2093, art. 2\(1\), Sch. 1](#) (subject to arts. 3-8 (as amended by [S.I. 2003/2332, art. 2](#)))

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

- C1** Sch. B1 applied in part (with modifications) (5.10.2004) by [Energy Act 2004 \(c. 20\), ss. 159\(1\), 198, Sch. 20 Pts. 1-3; S.I. 2004/2575, art. 2\(1\), Sch. 1](#)
- C1** Sch. B1 applied (with modifications) (1.7. 2005) by [S.I. 1994/2421, art. 6\(1\), Sch. 2](#) (as amended (1.7.2005) by [S.I. 2005/1516, arts. 3, 7, Sch. 1](#) (with art. 2))
- C1** Sch. B1: specified provisions applied (with modifications) (1.10.2011) by [Postal Services Act 2011 \(c. 5\), ss. 73, 93\(2\)\(3\), {Sch. 10 Pts. 1, 2}; S.I. 2011/2329, art. 3](#) (with arts. 4, 5)

#### REPLACING ADMINISTRATOR

##### *Resignation of administrator*

- 87 (1) An administrator may resign only in prescribed circumstances.
- (2) Where an administrator may resign he may do so only—
- (a) in the case of an administrator appointed by administration order, by notice in writing to the court,
  - (b) in the case of an administrator appointed under paragraph 14, by notice in writing to the [<sup>F2</sup>holder of the floating charge by virtue of which the appointment was made],
  - (c) in the case of an administrator appointed under paragraph 22(1), by notice in writing to the company, or
  - (d) in the case of an administrator appointed under paragraph 22(2), by notice in writing to the directors of the company.

##### Textual Amendments

- F2** Words in Sch. B1 para. 87(2)(b) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\), art. 2\(4\)](#)

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

- C1** Sch. B1 para. 87 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

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### *Removal of administrator from office*

88 The court may by order remove an administrator from office.

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

**C2** Sch. B1 para. 88 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch. para. 3](#)

### *Administrator ceasing to be qualified*

- 89 (1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—
- (a) in the case of an administrator appointed by administration order, to the court,
  - (b) in the case of an administrator appointed under paragraph 14, to the <sup>[F3]</sup>holder of the floating charge by virtue of which the appointment was made],
  - (c) in the case of an administrator appointed under paragraph 22(1), to the company, or
  - (d) in the case of an administrator appointed under paragraph 22(2), to the directors of the company.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

#### **Textual Amendments**

**F3** Words in Sch. B1 para. 89(2)(b) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 2\(5\)](#)

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

**C3** Sch. B1 para. 89 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch. para. 3](#)

### *Supplying vacancy in office of administrator*

- 90 Paragraphs 91 to 95 apply where an administrator—
- (a) dies,
  - (b) resigns,
  - (c) is removed from office under paragraph 88, or
  - (d) vacates office under paragraph 89.

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

**C4** Sch. B1 para. 90 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch. para. 3](#)

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- 91 (1) Where the administrator was appointed by administration order, the court may replace the administrator on an application under this sub-paragraph made by—
- (a) a creditors' committee of the company,
  - (b) the company,
  - (c) the directors of the company,
  - (d) one or more creditors of the company, or
  - (e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.
- (2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—
- (a) there is no creditors' committee of the company,
  - (b) the court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or
  - (c) the court is satisfied that for another reason it is right for the application to be made.

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

**C5** Sch. B1 para. 91 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

- 92 Where the administrator was appointed under paragraph 14 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.
- 93 (1) Where the administrator was appointed under paragraph 22(1) by the company it may replace the administrator.
- (2) A replacement under this paragraph may be made only—
- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
  - (b) where consent is withheld, with the permission of the court.
- 94 (1) Where the administrator was appointed under paragraph 22(2) the directors of the company may replace the administrator.
- (2) A replacement under this paragraph may be made only—
- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
  - (b) where consent is withheld, with the permission of the court.
- 95 The court may replace an administrator on the application of a person listed in paragraph 91(1) if the court—
- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 92 to 94 is not taking reasonable steps to make a replacement, or
  - (b) that for another reason it is right for the court to make the replacement.

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*Substitution of administrator: competing floating charge-holder*

- 96 (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 by the holder of a qualifying floating charge in respect of the company's property.
- (2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.
- (3) One floating charge is prior to another for the purposes of this paragraph if—
- (a) it was created first, or
  - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.
- (4) Sub-paragraph (3) shall have effect in relation to Scotland as if the following were substituted for paragraph (a)—
- (a) it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 (c. 6), "

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

**C6** Sch. B1 para. 96 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

*Substitution of administrator appointed by company or directors: creditors' meeting*

- 97 (1) This paragraph applies where—
- (a) an administrator of a company is appointed by a company or directors under paragraph 22, and
  - (b) there is no holder of a qualifying floating charge in respect of the company's property.
- (2) A creditors' meeting may replace the administrator.
- (3) A creditors' meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

*Vacation of office: discharge from liability*

- 98 (1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.
- (2) The discharge provided by sub-paragraph (1) takes effect—
- (a) in the case of an administrator who dies, on the filing with the court of notice of his death,
  - (b) in the case of an administrator appointed under paragraph 14 or 22, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or
  - (c) in any case, at a time specified by the court.

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- (3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 52(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—
- (a) each secured creditor of the company, or
  - (b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—
    - (i) each secured creditor of the company, and
    - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) Discharge—
- (a) applies to liability accrued before the discharge takes effect, and
  - (b) does not prevent the exercise of the court’s powers under paragraph 75.

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

C7 Sch. B1 para. 98 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), [regs. 1\(3\), 5\(5\)](#))

*Vacation of office: charges and liabilities*

- 99 (1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).
- (2) In this paragraph—
- “the former administrator” means the person referred to in sub-paragraph (1), and
  - “cessation” means the time when he ceases to be the company’s administrator.
- (3) The former administrator’s remuneration and expenses shall be—
- (a) charged on and payable out of property of which he had custody or control immediately before cessation, and
  - (b) payable in priority to any security to which paragraph 70 applies.
- (4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—
- (a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and
  - (b) payable in priority to any charge arising under sub-paragraph (3).
- (5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—
- (a) action taken within the period of 14 days after an administrator’s appointment shall not be taken to amount or contribute to the adoption of a contract,

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- (b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and
  - (c) no account shall be taken of a liability to make a payment other than wages or salary.
- (6) In sub-paragraph (5)(c) “wages or salary” includes—
- (a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),
  - (b) a sum payable in respect of a period of absence through illness or other good cause,
  - (c) a sum payable in lieu of holiday,
  - (d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and
  - (e) a contribution to an occupational pension scheme.]

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

- C8** Sch. B1 para. 99 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3
- C9** Sch. B1 para. 99(3) applied by [The Financial Market and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), reg. 14(5)(a)(iii) (as substituted (1.10.2009) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), **reg. 4(d)(iii)**)

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