



Insolvency Act 1986

1986 CHAPTER 45

PART III

RECEIVERSHIP

CHAPTER II

RECEIVERS (SCOTLAND)

70 Interpretation for Chapter II.

(1) In this Chapter, unless the contrary intention appears, the following expressions have the following meanings respectively assigned to them—

“company” means an incorporated company (whether or not [^{F1}a company registered under the Companies Act 2006]) which the Court of Session has jurisdiction to wind up;

“fixed security”, in relation to any property of a company, means any security, other than a floating charge or a charge having the nature of a floating charge, which on the winding up of the company in Scotland would be treated as an effective security over that property, and (without prejudice to that generality) includes a security over that property, being a heritable security within the meaning of the ^{M1}Conveyancing and Feudal Reform (Scotland) Act 1970;

“instrument of appointment” has the meaning given by section 53(1);

“prescribed” means prescribed by regulations made under this Chapter by the Secretary of State;

“receiver” means a receiver of such part of the property of the company as is subject to the floating charge by virtue of which he has been appointed under section 51;

“register of charges” means the register kept by the registrar of companies for the purposes of [^{F2}Chapter 2 of Part 25 of the Companies Act 2006];

Status: Point in time view as at 01/10/2009. This version of this provision has been superseded.

Changes to legislation: Insolvency Act 1986, Section 70 is up to date with all changes known to be in force on or before 03 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)

“secured debenture” means a bond, debenture, debenture stock or other security which, either itself or by reference to any other instrument, creates a floating charge over all or any part of the property of the company, but does not include a security which creates no charge other than a fixed security; and

“series of secured debentures” means two or more secured debentures created as a series by the company in such a manner that the holders thereof are entitled *pari passu* to the benefit of the floating charge.

- (2) Where a floating charge, secured debenture or series of secured debentures has been created by the company, then, except where the context otherwise requires, any reference in this Chapter to the holder of the floating charge shall—
- (a) where the floating charge, secured debenture or series of secured debentures provides for a receiver to be appointed by any person or body, be construed as a reference to that person or body;
 - (b) where, in the case of a series of secured debentures, no such provision has been made therein but—
 - (i) there are trustees acting for the debenture-holders under and in accordance with a trust deed, be construed as a reference to those trustees, and
 - (ii) where no such trustees are acting, be construed as a reference to—
 - (aa) a majority in nominal value of those present or represented by proxy and voting at a meeting of debenture-holders at which the holders of at least one-third in nominal value of the outstanding debentures of the series are present or so represented, or
 - (bb) where no such meeting is held, the holders of at least one-half in nominal value of the outstanding debentures of the series.
- (3) Any reference in this Chapter to a floating charge, secured debenture, series of secured debentures or instrument creating a charge includes, except where the context otherwise requires, a reference to that floating charge, debenture, series of debentures or instrument as varied by any instrument.
- (4) References in this Chapter to the instrument by which a floating charge was created are, in the case of a floating charge created by words in a bond or other written acknowledgement, references to the bond or, as the case may be, the other written acknowledgement.

Textual Amendments

F1 Words in s. 70(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 74(7)} (with art. 10, Sch. 1 para. 84)

F2 Words in s. 70(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 74(7)} (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

C1 S. 70 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

Marginal Citations

M1 1970 c. 35

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