



# Companies Act 1989

## 1989 CHAPTER 40

### PART VII

#### FINANCIAL MARKETS AND INSOLVENCY

##### *Market charges*

#### **173 Market charges.**

- (1) In this Part “market charge” means a charge, whether fixed or floating, granted—
- (a) in favour of a recognised investment exchange, for the purpose of securing debts or liabilities arising in connection with the settlement of market contracts,
  - [<sup>F1</sup>(aa) in favour of The Stock Exchange, for the purpose of securing debts or liabilities arising in connection with short term certificates;]
  - (b) in favour of a recognised clearing house, for the purpose of securing debts or liabilities arising in connection with their ensuring the performance of market contracts, or
  - (c) in favour of a person who agrees to make payments as a result of the transfer [<sup>F2</sup>or allotment] of specified securities made through the medium of a computer-based system established by the Bank of England and The Stock Exchange, for the purpose of securing debts or liabilities of the transferee [<sup>F2</sup>or allottee] arising in connection therewith.
- (2) Where a charge is granted partly for purposes specified in subsection (1)(a), [<sup>F3</sup>(aa),] (b) or (c) and partly for other purposes, it is a “market charge” so far as it has effect for the specified purposes.
- (3) [<sup>F4</sup>In subsection (1)—

“short term certificate” means an instrument issued by The Stock Exchange undertaking to procure the transfer of property of a value and description specified in the instrument to or to the order of the person to whom the instrument is issued or his endorsee or to a person acting on behalf of either of

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them and also undertaking to make appropriate payments in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part;]

“specified securities” means securities for the time being specified in the list in Schedule 1 to the <sup>M1</sup>Stock Transfer Act 1982, and includes any right to such securities; and

“transfer”, in relation to any such securities or right, means a transfer of the beneficial interest.

- (4) The Secretary of State may by regulations make further provision as to the charges granted in favour of any such person as is mentioned in subsection (1)(a), (b) or (c) which are to be treated as “market charges” for the purposes of this Part; and the regulations may add to, amend or repeal the provisions of subsections (1) to (3) above.
- (5) The regulations may provide that a charge shall or shall not be treated as a market charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.
- (6) Before making regulations under this section in relation to charges granted in favour of a person within subsection (1)(c), the Secretary of State [<sup>F5</sup>and the Treasury shall consult] the Bank of England.

#### Textual Amendments

- F1** S. 173(1)(aa) inserted by S.I. 1991/880, **reg. 9(a)**
- F2** Words in s. 173(1)(c) inserted by S.I. 1991/880, **reg. 9(b)**
- F3** Word in s. 173(2) inserted by S.I. 1991/880, **reg. 9(c)**
- F4** Words in s. 173(3) substituted by S.I. 1991/880, **reg. 9(d)**
- F5** Words in s. 173(6) substituted (7.6.1992) by S.I. 1992/1315, **art. 10(1), Sch. 4 para. 13**

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

- C1** Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, **art. 4, Sch. 2 para.7** (with **art. 6**).

#### Commencement Information

- I1** S. 173 wholly in force; s. 173(4)(5) in force for certain purposes at 25.3.1991 and s. 173 wholly in force at 25.4.1991 see s. 215(2); S.I. 1991/488, **art. 2(2)**; S.I. 1991/878, **art. 2, Sch.**

#### Marginal Citations

- M1** 1982 c. 41.

## 174 Modifications of the law of insolvency.

- (1) The general law of insolvency has effect in relation to market charges and action taken in enforcing them subject to the provisions of section 175.
- (2) The Secretary of State may by regulations make further provision modifying the law of insolvency in relation to the matters mentioned in subsection (1).
- (3) The regulations may add to, amend or repeal the provisions mentioned in subsection (1), and any other provision of this Part as it applies for the purposes of

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those provisions, or provide that those provisions have effect with such exceptions, additions or adaptations as are specified in the regulations.

- (4) The regulations may make different provision for cases defined by reference to the nature of the charge, the nature of the property subject to it, the circumstances, nature or extent of the obligations secured by it or any other relevant factor.
- (5) Before making regulations under this section in relation to charges granted in favour of a person within section 173(1)(c), the Secretary of State [<sup>F6</sup>and the Treasury shall consult] the Bank of England.

#### Textual Amendments

**F6** Words in s. 174(5) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), Sch. 4 para. 13(d) (with art. 6).

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

**C2** Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para.7 (with art. 6).

#### Commencement Information

**I2** S. 174 wholly in force; s. 174 not in force at Royal Assent see s. 215(2); s. 174(2)(4) in force for certain purposes at 25.3.1991 by S.I. 1991/488, art. 2(2); s. 174 wholly in force at 25.4.1991 by S.I. 1991/878, art. 2, Sch. (subject to certain savings for s. 174(1) in art. 3(4)).

## 175 Administration orders, &c.

[<sup>F7</sup>(1) The following provisions of Schedule B1 to the Insolvency Act 1986 (administration) do not apply in relation to a market charge—

- (a) paragraph 43(2) and (3) (restriction on enforcement of security or repossession of goods) (including that provision as applied by paragraph 44 (interim moratorium)), and
- (b) paragraphs 70, 71 and 72 (power of administrator to deal with charged or hire-purchase property).

(1A) Paragraph 41(2) of that Schedule (receiver to vacate office at request of administrator) does not apply to a receiver appointed under a market charge.]

(2) However, where a market charge falls to be enforced after [<sup>F8</sup>the occurrence of an event to which subsection (2A) applies], and there exists another charge over some or all of the same property ranking in priority to or *pari passu* with the market charge, [<sup>F9</sup>on the application of any person interested] the court may order that there shall be taken after enforcement of the market charge such steps as the court may direct for the purpose of ensuring that the chargee under the other charge is not prejudiced by the enforcement of the market charge.

[<sup>F10</sup>(2A) This subsection applies to—

- (a) making an administration application under paragraph 12 of Schedule B1 to the Insolvency Act 1986,
- (b) appointing an administrator under paragraph 14 or 22 of that Schedule (appointment by floating charge holder, company or directors),
- (c) filing with the court a copy of notice of intention to appoint an administrator under either of those paragraphs.]

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- (3) The following provisions of the Insolvency Act 1986 (which relate to the powers of receivers) do not apply in relation to a market charge—
- (a) section 43 (power of administrative receiver to dispose of charged property), and
  - (b) section 61 (power of receiver in Scotland to dispose of an interest in property).
- (4) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up<sup>[F11]</sup>, making of bankruptcy application] or presentation of bankruptcy petition), and section 32(8) of the<sup>M2</sup>Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to a disposition of property as a result of which the property becomes subject to a market charge or any transaction pursuant to which that disposition is made.
- <sup>[F12]</sup>(5) However, if a person who is party to a disposition mentioned in subsection (4) has notice at the time of the disposition that <sup>[F13]</sup>a bankruptcy application has been made or] a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the party making the disposition, the value of any profit to him arising from the disposition is recoverable from him by the relevant office-holder unless—
- (a) the person is a chargee under the market charge,
  - (b) the disposition is made in accordance with the default rules of a recognised central counterparty for the purposes of transferring a position or asset of a clearing member in default, or
  - (c) the court directs otherwise.]
- <sup>[F14]</sup>(5A) In subsection (5)(b), “asset” has the meaning given by Article 39(10) of the EMIR Level 1 Regulation.]
- (6) Any sum recoverable by virtue of subsection (5) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.
- (7) In a case falling within both subsection (4) above (as a disposition of property as a result of which the property becomes subject to a market charge) and section 164(3) (as the provision of margin in relation to a market contract), section 164(4) applies with respect to the recovery of the amount or value of the margin and subsection (5) above does not apply.

#### Textual Amendments

- F7** S. 175(1)(1A) substituted (15.9.2003) for s. 175(1) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(2) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F8** Words in s. 175(2) substituted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(3) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F9** Words in s. 175(2) inserted by S.I. 1991/880, reg. 18
- F10** S. 175(2A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(4) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F11** Words in s. 175(4) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 1 para. 9(6)(a)

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- F12** S. 175(5) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **4(13)** (with regs. 52-58)
- F13** Words in s. 175(5) inserted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\)](#), reg. 1, **Sch. 1 para. 9(6)(b)**
- F14** S. 175(5A) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **4(14)** (with regs. 52-58)

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

- C3** S. 175 (as it has effect by virtue of [Enterprise Act 2002 \(c. 40\)](#), s. 249(1)) modified (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(12)** (with reg. 1(2)(3))
- C4** S. 175(2) restricted (25.2.1991) by [S.I. 1991/145](#), **art. 3**  
S. 175(2) amended by [S.I. 1991/880](#), **reg. 19(2)**
- C5** S. 175(1)(b)(3) amended by [S.I. 1991/880](#), **reg. 15**  
S. 175(1)(b)(3) modified (15.8.1995) by [S.I. 1995/2049](#), **reg. 24**  
S. 175(1)(b)(3) modified (15.7.1996) by [S.I. 1996/1469](#), **reg. 8(2)**
- C6** S. 175(5) amended by [S.I. 1991/880](#), **reg. 19(1)**
- C7** S. 175(5)(6) excluded in part (11.12.1999) by [S.I. 1999/2979](#), **reg. 21(2)(c)**

#### **Commencement Information**

- I3** S. 175 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), **art. 2**, **Sch.** (subject to certain savings in [art. 3\(4\)](#))

#### **Marginal Citations**

- M2** [1985 c. 66](#).

### **176 Power to make provision about certain other charges.**

- (1) The Secretary of State may by regulations provide that the general law of insolvency has effect in relation to charges of such descriptions as may be specified in the regulations, and action taken in enforcing them, subject to such provisions as may be specified in the regulations.
- (2) The regulations may specify any description of charge granted in favour of—
- (a) a body approved under section 170 (certain overseas exchanges and clearing houses),
  - (b) a person included in the list maintained by the [<sup>F15</sup>Bank of England] for the purposes of [<sup>F16</sup>section 301 of the Financial Services and Markets Act 2000] (certain money market institutions),
  - (c) the Bank of England,
  - [<sup>F17</sup>(d) a person who has permission under [<sup>F18</sup>Part 4A] of the Financial Services and Markets Act 2000 to carry on a relevant regulated activity, or
  - (e) an international securities self-regulating organisation approved for the purposes of an order made under section 22 of the Financial Services and Markets Act 2000,]

for the purpose of securing debts or liabilities arising in connection with or as a result of the settlement of contracts or the transfer of assets, rights or interests on a financial market.

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- (3) The regulations may specify any description of charge granted for that purpose in favour of any other person in connection with exchange facilities or clearing services provided by a recognised investment exchange or recognised clearing house or by any such body, person, authority or organisation as is mentioned in subsection (2).
- (4) Where a charge is granted partly for the purpose specified in subsection (2) and partly for other purposes, the power conferred by this section is exercisable in relation to the charge so far as it has effect for that purpose.
- (5) The regulations may—
- (a) make the same or similar provision in relation to the charges to which they apply as is made by or under sections 174 and 175 in relation to market charges, or
  - (b) apply any of those provisions with such exceptions, additions or adaptations as are specified in the regulations.
- <sup>F19</sup>(6) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of a person included in the list maintained by the <sup>F20</sup> . . . [<sup>F21</sup>Bank of England] for the purposes of [<sup>F22</sup>section 301 of the Financial Services and Markets Act 2000], or in connection with exchange facilities or clearing services provided by a person included in that list, the Secretary of State and the Treasury shall consult the [<sup>F23</sup>FCA] and the Bank of England.
- (6A) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of the Bank of England, or in connection with settlement arrangements provided by the Bank, the Secretary of State and the Treasury shall consult the Bank.]
- (7) Regulations under this section may provide that they apply or do not apply to a charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.
- <sup>F24</sup>(8) For the purposes of subsection (2)(d), “relevant regulated activity” means—
- (a) dealing in investments as principal or as agent;
  - (b) arranging deals in investments;
  - <sup>F25</sup>(ba) [ operating a multilateral trading facility;]
  - (c) managing investments;
  - (d) safeguarding and administering investments;
  - (e) sending dematerialised instructions; <sup>F26</sup> . . .
  - <sup>F27</sup>(ea) [ managing a UCITS;
  - (eb) acting as trustee or depositary of a UCITS;
  - (ec) managing an AIF;
  - (ed) acting as trustee or depositary of an AIF; or]
  - (f) establishing etc. a collective investment scheme.
- (9) Subsection (8) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]

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### Textual Amendments

- F15** Words in s. 176(2)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 69\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F16** Words in s. 176(2)(b) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 85\(2\)\(b\)](#)
- F17** S. 176(2)(d)(e) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 85\(3\)](#)
- F18** Words in s. 176(2)(d) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 69\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F19** S. 176(6)(6A) substituted (1.6.1998) for s. 176(6) by 1998 c. 11, s. 23, [Sch. 5 Pt. III para. 48\(3\)](#); [S.I. 1998/1120, art. 2](#)
- F20** Words in s. 176(6) repealed (1.12.2001) by [S.I. 2001/3649, arts. 1, 85\(4\)\(a\)](#)
- F21** Words in s. 176(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 69\(3\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F22** Words in s. 176(6) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 85\(4\)\(b\)](#)
- F23** Word in s. 176(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 69\(3\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F24** S. 176(8)(9) inserted (1.12.2001) by [S.I. 2001/3649, arts. 1, 85\(5\)](#)
- F25** S. 176(8)(ba) inserted (1.4.2007 for certain purposes and otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\), arts. 1\(2\), 32](#)
- F26** Word in s. 176(8) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\), reg. 1, Sch. 1 para. 39](#)
- F27** S. 176(8)(ea)-(ed) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\), reg. 1, Sch. 1 para. 39](#)

### Modifications etc. (not altering text)

- C8** S. 176: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by [S.I. 1992/1315, art. 4, Sch. 2 para. 7](#) (with art. 6).
- C9** S. 176 amended (1.1.1993) by [S.I. 1992/3218, reg. 82\(1\), Sch. 10 Pt. I para. 29](#)  
S. 176(2) extended (1.1.1996) by [S.I. 1995/3275, reg. 57, Sch. 10 Pt. I para. 13](#)

### Commencement Information

- I4** S. 176 wholly in force: s. 176 not in force at Royal Assent see s. 215(1)(2); s. 176 in force for certain purposes at 25.3.1991 by [S.I. 1991/488, art. 2\(2\)](#); s. 176 wholly in force at 4.7.1995 by [S.I. 1995/1591, art. 2](#)

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