



# Companies Act 1989

## 1989 CHAPTER 40

### PART VII

#### FINANCIAL MARKETS AND INSOLVENCY

##### *Market property*

#### **177 Application of margin [<sup>F1</sup>or default fund contribution] not affected by certain other interests.**

- (1) The following provisions have effect with respect to the application by a recognised investment exchange or recognised clearing house of property (other than land) held by the exchange or clearing house as margin in relation to a market contract [<sup>F2</sup>or as default fund contribution].
- (2) So far as necessary to enable the property to be applied in accordance with the rules of the exchange or clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the exchange or clearing house had notice of the interest, right or breach of duty at the time the property was provided as margin [<sup>F3</sup>or as default fund contribution].
- (3) No right or remedy arising subsequently to the property being provided as margin [<sup>F4</sup>or as default fund contribution] may be enforced so as to prevent or interfere with the application of the property by the exchange or clearing house in accordance with its rules.
- (4) Where an exchange or clearing house has power by virtue of the above provisions to apply property notwithstanding an interest, right or remedy, a person to whom the exchange or clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

*Status: Point in time view as at 26/08/2013. This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Cross Heading: Market property. (See end of Document for details)*

#### Textual Amendments

- F1** Words in s. 177 heading inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(13)(a)**
- F2** Words in s. 177(1) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(13)(b)**
- F3** Words in s. 177(2) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(13)(b)**
- F4** Words in s. 177(3) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(13)(c)**

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

- C1** S. 177 applied (15.8.1995) by [S.I. 1995/2049](#), **reg. 25(1)**

#### Commencement Information

- I1** S. 177 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\(5\)](#))

PROSPECTIVE

### 178 Priority of floating market charge over subsequent charges.

- (1) The Secretary of State may by regulations provide that a market charge which is a floating charge has priority over a charge subsequently created or arising, including a fixed charge.
- (2) The regulations may make different provision for cases defined, as regards the market charge or the subsequent charge, by reference to the description of charge, its terms, the circumstances in which it is created or arises, the nature of the charge, the person in favour of whom it is granted or arises or any other relevant factor.

### 179 Priority of market charge over unpaid vendor's lien.

Where property subject to an unpaid vendor's lien becomes subject to a market charge, the charge has priority over the lien unless the chargee had actual notice of the lien at the time the property became subject to the charge.

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

- C2** S. 179 applied (15.8.1995) by [S.I. 1995/2049](#), **reg. 25(2)**

#### Commencement Information

- I2** S. 179 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\(6\)](#))

### 180 Proceedings against market property by unsecured creditors.

- (1) Where property (other than land) is held by a recognised investment exchange or recognised clearing house as margin in relation to market contracts [F5] or as default

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fund contribution,] or is subject to a market charge, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of—

- (a) in the case of property provided as cover for margin [<sup>F6</sup>or as default fund contribution], the investment exchange or clearing house in question, or
  - (b) in the case of property subject to a market charge, the person in whose favour the charge was granted.
- (2) Where consent is given the proceedings may be commenced or continued notwithstanding any provision of the <sup>M1</sup>Insolvency Act 1986 or the <sup>M2</sup>Bankruptcy (Scotland) Act 1985.
- (3) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.
- (4) In the application of this section to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied shall be omitted.

#### Textual Amendments

**F5** Words in s. 180(1) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(14)(a)**

**F6** Words in s. 180(1)(a) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(14)(b)**

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

**C3** S. 180 applied (15.8.1995) by [S.I. 1995/2049](#), **reg. 25(3)**

#### Commencement Information

**I3** S. 180 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\(7\)](#)).

#### Marginal Citations

**M1** 1986 c. 45.

**M2** 1985 c. 66.

## 181 Power to apply provisions to other cases.

- (1) [<sup>F7</sup>A power to which this subsection applies includes the] power to apply sections 177 to 180 to any description of property provided as cover for margin in relation to contracts in relation to which the power is exercised or, as the case may be, property subject to charges in relation to which the power is exercised.
- (2) The regulations may provide that those sections apply with such exceptions, additions and adaptations as may be specified in the regulations.
- [<sup>F8</sup>(3) Subsection (1) applies to the powers of the Secretary of State and the Treasury to act jointly under—
  - (a) sections 170, 172 and 176 of this Act; and

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- (b) section 301 of the Financial Services and Markets Act 2000 (supervision of certain contracts).]

**Textual Amendments**

**F7** Words in [s. 181\(1\)](#) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 86(2)

**F8** [S. 181\(3\)](#) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 86(3)

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

**C4** [S. 181](#): 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**

**I4** [S. 181](#) wholly in force: [s. 181](#) not in force at Royal Assent see [s. 215\(1\)\(2\)](#); [s. 181](#) in force for certain purposes at 25.3.1991 by [S.I. 1991/488](#), [art. 2\(2\)](#); [s. 181](#) wholly in force at 4.7.1995 by [S.I. 1995/1591](#), [art. 2](#)

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