



Companies Act 1989

1989 CHAPTER 40

PART VII

FINANCIAL MARKETS AND INSOLVENCY

Supplementary provisions

182 Powers of court in relation to certain proceedings begun before commencement.

- (1) The powers conferred by this section are exercisable by the court where insolvency proceedings in respect of—
- (a) a member of a recognised investment exchange or a recognised clearing house, or
 - (b) a person by whom a market charge has been granted,
- are begun on or after 22nd December 1988 and before the commencement of this section.

That person is referred to in this section as “the relevant person”.

- (2) For the purposes of this section “insolvency proceedings” means proceedings under Part II, IV, V or IX of the ^{M1}Insolvency Act 1986 (administration, winding up and bankruptcy) or under the ^{M2}Bankruptcy (Scotland) Act 1985; and references in this section to the beginning of such proceedings are to—
- (a) the presentation of a petition on which an administration order, winding-up order, bankruptcy order or award of sequestration is made, or
 - (b) the passing of a resolution for voluntary winding up.
- (3) This section applies in relation to—
- (a) in England and Wales, the administration of the insolvent estate of a deceased person, and
 - (b) in Scotland, the administration by a judicial factor appointed under section 11A of the ^{M3}Judicial Factors (Scotland) Act 1889 of the insolvent estate of a deceased person,

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as it applies in relation to insolvency proceedings.

In such a case references to the beginning of the proceedings shall be construed as references to the death of the relevant person.

- (4) The court may on an application made, within three months after the commencement of this section, by—
- (a) a recognised investment exchange or recognised clearing house, or
 - (b) a person in whose favour a market charge has been granted,
- make such order as it thinks fit for achieving, except so far as assets of the relevant person have been distributed before the making of the application, the same result as if the provisions of Schedule 22 had come into force on 22nd December 1988.
- (5) The provisions of that Schedule (“the relevant provisions”) reproduce the effect of certain provisions of this Part as they appeared in the Bill for this Act as introduced into the House of Lords and published on that date.
- (6) The court may in particular—
- (a) require the relevant person or a relevant office-holder—
 - (i) to return property provided as cover for margin or which was subject to a market charge, or to pay to the applicant or any other person the proceeds of realisation of such property, or
 - (ii) to pay to the applicant or any other person such amount as the court estimates would have been payable to that person if the relevant provisions had come into force on 22nd December 1988 and market contracts had been settled in accordance with the rules of the recognised investment exchange or recognised clearing house, or a proportion of that amount if the property of the relevant person or relevant office-holder is not sufficient to meet the amount in full;
 - (b) provide that contracts, rules and dispositions shall be treated as not having been void;
 - (c) modify the functions of a relevant office-holder, or the duties of the applicant or any other person, in relation to the insolvency proceedings, or indemnify any such person in respect of acts or omissions which would have been proper if the relevant provisions had been in force;
 - (d) provide that conduct which constituted an offence be treated as not having done so;
 - (e) dismiss proceedings which could not have been brought if the relevant provisions had come into force on 22nd December 1988, and reverse the effect of any order of a court which could not, or would not, have been made if those provisions had come into force on that date.
- (7) An order under this section shall not be made against a relevant office-holder if the effect would be that his remuneration, costs and expenses could not be met.

Marginal Citations

- M1** 1986 c. 45.
M2 1985 c. 66.
M3 1889 c. 39.

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183 Insolvency proceedings in other jurisdictions.

- (1) The references to insolvency law in section 426 of the ^{M4}Insolvency Act 1986 (co-operation with courts exercising insolvency jurisdiction in other jurisdictions) include, in relation to a part of the United Kingdom, the provisions made by or under this Part and, in relation to a relevant country or territory within the meaning of that section, so much of the law of that country or territory as corresponds to any provisions made by or under this Part.
- (2) A court shall not, in pursuance of that section or any other enactment or rule of law, recognise or give effect to—
 - (a) any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom, or
 - (b) any act of a person appointed in such a country or territory to discharge any functions under insolvency law,in so far as the making of the order or the doing of the act would be prohibited in the case of a court in the United Kingdom or a relevant office-holder by provisions made by or under this Part.
- (3) Subsection (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the ^{M5}Civil Jurisdiction and Judgments Act 1982.

Marginal Citations

- M4** 1986 c. 45.
M5 1982 c. 27.

184 Indemnity for certain acts, &c.

- (1) Where a relevant office-holder takes any action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognised investment exchange or recognised clearing house, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by the office-holder's own negligence.
- (2) Any failure by a recognised investment exchange or recognised clearing house to comply with its own rules in respect of any matter shall not prevent that matter being treated for the purposes of this Part as done in accordance with those rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the rules.
- (3) No recognised investment exchange or recognised clearing house, nor any officer or servant or member of the governing body of a recognised investment exchange or recognised clearing house, shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.
- (4) The functions to which subsection (3) applies are the functions of the exchange or clearing house so far as relating to, or to matters arising out of—
 - (a) its default rules, or
 - (b) any obligations to which it is subject by virtue of this Part.

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- (5) No person exercising any functions by virtue of arrangements made pursuant to paragraph 5 or 12 of Schedule 21 (delegation of functions in connection with default procedures), nor any officer or servant of such a person, shall be liable in damages for anything done or omitted in the discharge or purported discharge of those functions unless the act or omission is shown to have been in bad faith.

Commencement Information

- II** [S. 184](#) wholly in force at 1.10.1991; [s. 184](#) in force for certain purposes on 25.3.1991 see [s. 215](#) and [S.I. 1991/488](#), [art. 2\(2\)](#), [s. 184](#) in force for certain purposes on 25.4.1991 see [s. 215](#) and [S.I. 1991/878](#), [art. 2 Sch.](#), [s. 184](#) wholly in force at 1.10.1991 see [S.I. 1991/2173](#), [art. 3](#)

185 Power to make further provision by regulations.

- (1) The Secretary of State may by regulations make such further provision as appears to him necessary or expedient for the purposes of this Part.
- (2) Provision may, in particular, be made—
- (a) for integrating the provisions of this Part with the general law of insolvency, and
 - (b) for adapting the provisions of this Part in their application to overseas investment exchanges and clearing houses.
- (3) Regulations under this section may add to, amend or repeal any of the provisions of this Part or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

Modifications etc. (not altering text)

- C1** [S. 185](#): 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.185](#) wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by [s. 215\(2\)](#) and [S.I. 1991/488](#), [art. 2\(2\)](#), and for all remaining purposes at 10.8.1998 by [S.I. 1998/1747](#), [art. 2](#).

186 Supplementary provisions as to regulations.

- (1) Regulations under this Part may make different provision for different cases and may contain such incidental, transitional and other supplementary provisions as appear to the Secretary of State to be necessary or expedient.
- (2) Regulations under this Part shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

- C2** [S. 186](#): 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](#))

Status: Point in time view as at 25/03/1991.

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Commencement Information

- I3** S.186 wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by s. 215(2) and S.I. 1991/488, **art. 2(2)** and for all remaining purposes at 8.10.1998 by S.I. 1998/1747, **art. 2**

187 Construction of references to parties to market contracts.

- (1) Where a person enters into market contracts in more than one capacity, the provisions of this Part apply (subject as follows) as if the contracts entered into in each different capacity were entered into by different persons.
- (2) References in this Part to a market contract to which a person is a party include (subject as follows, and unless the context otherwise requires) contracts to which he is party as agent.
- (3) The Secretary of State may by regulations—
 - (a) modify or exclude the operation of subsections (1) and (2), and
 - (b) make provision as to the circumstances in which a person is to be regarded for the purposes of those provisions as acting in different capacities.

Modifications etc. (not altering text)

- C3** S. 187(1) amended by S.I. 1991/880, **reg. 16(2)**

Commencement Information

- I4** S.187 wholly in force; s. 187(3) in force for certain purposes at 25.3.1991, s. 187 wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/488, **art. 2(2)**; S.I. 1991/878, **art. 2, Sch.**

188 Meaning of “default rules” and related expressions.

- (1) In this Part “default rules” means rules of a recognised investment exchange or recognised clearing house which provide for the taking of action in the event of a person appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.
- (2) References in this Part to a “defaulter” are to a person in respect of whom action has been taken by a recognised investment exchange or recognised clearing house under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Part to “default” shall be construed accordingly.
- (3) In this Part “default proceedings” means proceedings taken by a recognised investment exchange or recognised clearing house under its default rules.
- (4) If an exchange or clearing house takes action under its default rules in respect of a person, all subsequent proceedings under its rules for the purposes of or in connection with the settlement of market contracts to which the defaulter is a party shall be treated as done under its default rules.

189 Meaning of “relevant office-holder”.

- (1) The following are relevant office-holders for the purposes of this Part—

Status: Point in time view as at 25/03/1991.

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- (a) the official receiver,
 - (b) any person acting in relation to a company as its liquidator, provisional liquidator, administrator or administrative receiver,
 - (c) any person acting in relation to an individual (or, in Scotland, any debtor within the meaning of the ^{M6}Bankruptcy (Scotland) Act 1985) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate,
 - (d) any person acting as administrator of an insolvent estate of a deceased person.
- (2) In subsection (1)(b) “company” means any company, society, association, partnership or other body which may be wound up under the ^{M7}Insolvency Act 1986.

Marginal Citations

M6 1985 c. 66.

M7 1986 c.45.

190 Minor definitions.

- (1) In this Part—
- “administrative receiver” has the meaning given by section 251 of the Insolvency Act 1986;
 - “charge” means any form of security, including a mortgage and, in Scotland, a heritable security;
 - “clearing house” has the same meaning as in the ^{M8}Financial Services Act 1986;
 - “interim trustee” and “permanent trustee” have the same meaning as in the Bankruptcy (Scotland) Act 1985;
 - “investment” and “investment exchange” have the same meaning as in the Financial Services Act 1986;
 - “overseas”, in relation to an investment exchange or clearing house, means having its head office outside the United Kingdom;
 - “recognised” means recognised under the Financial Services Act 1986;
 - “set-off”, in relation to Scotland, includes compensation;
 - “The Stock Exchange” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;
 - “UK”, in relation to an investment exchange or clearing house, means having its head office in the United Kingdom.
- (2) References in this Part to settlement in relation to a market contract are to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.
- (3) In this Part the expressions “margin” and “cover for margin” have the same meaning.
- (4) References in this Part to ensuring the performance of a transaction have the same meaning as in the ^{M9}Financial Services Act 1986.
- (5) For the purposes of this Part a person shall be taken to have notice of a matter if he deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

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This does not apply for the purposes of a provision requiring “actual notice”.

- (6) References in this Part to the law of insolvency include references to every provision made by or under the ^{M10}Insolvency Act 1986 or the ^{M11}Bankruptcy (Scotland) Act 1985; and in relation to a building society references to insolvency law or to any provision of the Insolvency Act 1986 are to that law or provision as modified by the Building Societies Act 1986.
- (7) In relation to Scotland, references in this Part—
- (a) to sequestration include references to the administration by a judicial factor of the insolvent estate of a deceased person, and
 - (b) to an interim or permanent trustee include references to a judicial factor on the insolvent estate of a deceased person,
- unless the context otherwise requires.

Marginal Citations

- M8** 1986 c. 60.
M9 1986 c.60.
M10 1986 c. 45.
M11 1985 c. 66.

191 Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section or paragraph)—

administrative receiver	section 190(1)
charge	section 190(1)
clearing house	section 190(1)
cover for margin	section 190(3)
default rules (and related expressions)	section 188
designated non-member	section 155(2)
ensuring the performance of a transaction	section 190(4)
insolvency law (and similar expressions)	section 190(6)
interim trustee	section 190(1) and (7)(b)
investment	section 190(1)
investment exchange	section 190(1)
margin	section 190(3)
market charge	section 173
market contract	section 155
notice	section 190(5)

Status: Point in time view as at 25/03/1991.

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overseas (in relation to an investment exchange or clearing house)	section 190(1)
party (in relation to a market contract)	section 187
permanent trustee	section 190(1) and (7)(b)
recognised	section 190(1)
relevant office-holder	section 189
sequestration	section 190(7)(a)
set off (in relation to Scotland)	section 190(1)
settlement and related expressions (in relation to a market contract)	section 190(2)
The Stock Exchange	section 190(1)
trustee, interim or permanent (in relation to Scotland)	section 190(7)(b)
UK (in relation to an investment exchange or clearing house)	section 190(1).

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