



Companies Act 1989

1989 CHAPTER 40

PART VII

FINANCIAL MARKETS AND INSOLVENCY

[^{F1}Recognised bodies]

164 Disclaimer of property, rescission of contracts, &c.

- (1) Sections 178, 186, 315 and 345 of the Insolvency Act 1986 (power to disclaim onerous property and court's power to order rescission of contracts, &c.) do not apply in relation to—
- (a) a market contract, ^{F1}...
 - ^{F2}(aa) a qualifying collateral arrangement,
 - (ab) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, as mentioned in paragraphs (c) to (e) of section 158(1),
 - (ac) a qualifying property transfer, or]
 - (b) a contract effected by [^{F3}the recognised body] for the purpose of realising property provided as margin in relation to market contracts [^{F4}or as default fund contribution].

In the application of this subsection in Scotland, the reference to sections 178, 315 and 345 shall be construed as a reference to any rule of law having the like effect as those sections.

- (2) In Scotland, a [^{F5}trustee in the sequestration of the] estate of a defaulter or a liquidator is bound by any market contract to which that defaulter is a party and by any contract as is mentioned in subsection (1)(b) above notwithstanding section [^{F6}110 of the Bankruptcy (Scotland) Act 2016] or any rule of law to the like effect applying in liquidations.
- (3) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up [^{F7}, submission of bankruptcy application or] or presentation of bankruptcy petition), and section [^{F8}87(4) of the Bankruptcy

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Section 164. (See end of Document for details)

(Scotland) Act 2016] (effect of dealing with debtor relating to estate vested in ^{F9}... trustee), do not apply to—

- (a) a market contract, or any disposition of property in pursuance of such a contract,
- (b) the provision of margin in relation to market contracts,
- ^{F10}(ba) the provision of default fund contribution to [^{F11}the recognised body],]
- ^{F12}(bb) a qualifying collateral arrangement,
- (bc) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, as mentioned in paragraphs (c) to (e) of section 158(1),
- (bd) a qualifying property transfer]
- (c) a contract effected by [^{F11}the recognised body] for the purpose of realising property provided as margin in relation to a market contract [^{F13}or as default fund contribution], or any disposition of property in pursuance of such a contract, or
- (d) any disposition of property in accordance with the rules of [^{F11}the recognised body] as to the application of property provided as margin [^{F14}or as default fund contribution].

(4) However, where—

- (a) a market contract is entered into by a person who has notice that [^{F15}a bankruptcy application has been submitted or] a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the other party to the contract, or
- (b) margin in relation to a market contract [^{F16}or default fund contribution] is accepted by a person who has notice that [^{F17}such an application has been made or petition presented] in relation to the person by whom or on whose behalf the margin [^{F18}or default fund contribution] is provided,

the value of any profit to him arising from the contract or, as the case may be, the amount or value of the margin [^{F18}or default fund contribution] is recoverable from him by the relevant office-holder unless the court directs otherwise.

^{F19}(5) Subsection (4)(a) does not apply where the person entering into the contract is [^{F20}a recognised body] acting in accordance with its rules, or where the contract is effected under the default rules of such [^{F21}a recognised body]; but subsection (4)(b) applies in relation to the provision of—

- (a) margin in relation to any such contract, unless the contract has been transferred in accordance with the default rules of the central counterparty, or
- (b) default fund contribution.]

(6) Any sum recoverable by virtue of subsection (4) 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.

Textual Amendments

- F1** Word in s. 164(1)(a) omitted (1.4.2013) by virtue of [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(9)(a)** (with regs. 52-58)
- F2** S. 164(1)(aa)-(ac) 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(9)(b)** (with regs. 52-58)

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- F3** Words in s. 164(1)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(11)(a)** (with regs. 7(4), 9(1))
- F4** Words in s. 164(1)(b) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(a)** (with reg. 1(2)(3))
- F5** Words in s. 164(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(5)(a)(i)**
- F6** Words in s. 164(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(5)(a)(ii)**
- F7** Words in s. 164(3) 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(5)(a)**
- F8** Words in s. 164(3) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(5)(b)(i)**
- F9** Word in s. 164(3) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(5)(b)(ii)**
- F10** S. 164(3)(ba) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(b)(i)** (with reg. 1(2)(3))
- F11** Words in s. 164(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(11)(b)** (with regs. 7(4), 9(1))
- F12** S. 164(3)(bb)-(bd) 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(9)(c)** (with regs. 52-58)
- F13** Words in s. 164(3)(c) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(b)(ii)** (with reg. 1(2)(3))
- F14** Words in s. 164(3)(d) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(b)(iii)** (with reg. 1(2)(3))
- F15** Words in s. 164(4)(a) 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(5)(b)**
- F16** Words in s. 164(4) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(c)(i)** (with reg. 1(2)(3))
- F17** Words in s. 164(4)(b) substituted (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(5)(c)**
- F18** Words in s. 164(4) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(c)(ii)** (with reg. 1(2)(3))
- F19** S. 164(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(9)(d)** (with regs. 52-58)
- F20** Words in s. 164(5) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(11)(c)(i)** (with regs. 7(4), 9(1))
- F21** Words in s. 164(5) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(11)(c)(ii)** (with regs. 7(4), 9(1))

Modifications etc. (not altering text)

- C1** S. 164 amended by S.I. 1991/880, **reg. 19(1)**
- C2** S. 164(4)-(6) excluded in part (11.12.1999) by S.I. 1999/2979, **reg. 21(2)(b)**

Commencement Information

- I1** S. 164 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

Changes to legislation:

There are currently no known outstanding effects for the Companies Act 1989, Section 164.