



Enterprise Act 2002

2002 CHAPTER 40

PART 10

INSOLVENCY

Companies etc.

252 Unsecured creditors

The following shall be inserted after section 176 of the Insolvency Act 1986 (winding up: preferential debt)—

“Property subject to floating charge

176A Share of assets for unsecured creditors

- (1) This section applies where a floating charge relates to property of a company—
 - (a) which has gone into liquidation,
 - (b) which is in administration,
 - (c) of which there is a provisional liquidator, or
 - (d) of which there is a receiver.
- (2) The liquidator, administrator or receiver—
 - (a) shall make a prescribed part of the company’s net property available for the satisfaction of unsecured debts, and
 - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Subsection (2) shall not apply to a company if—
 - (a) the company’s net property is less than the prescribed minimum, and

Status: This is the original version (as it was originally enacted).

- (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.
- (4) Subsection (2) shall also not apply to a company if or in so far as it is disapplied by—
 - (a) a voluntary arrangement in respect of the company, or
 - (b) a compromise or arrangement agreed under section 425 of the Companies Act (compromise with creditors and members).
- (5) Subsection (2) shall also not apply to a company if—
 - (a) the liquidator, administrator or receiver applies to the court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
 - (b) the court orders that subsection (2) shall not apply.
- (6) In subsections (2) and (3) a company’s net property is the amount of its property which would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (7) An order under subsection (2) prescribing part of a company’s net property may, in particular, provide for its calculation—
 - (a) as a percentage of the company’s net property, or
 - (b) as an aggregate of different percentages of different parts of the company’s net property.
- (8) An order under this section—
 - (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment pursuant to a resolution of either House of Parliament.
- (9) In this section—
 - “floating charge” means a charge which is a floating charge on its creation and which is created after the first order under subsection (2) comes into force, and
 - “prescribed” means prescribed by order by the Secretary of State.
- (10) An order under this section may include transitional or incidental provision.”