



# Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

## PART VI

### RECEIVERS AND MANAGERS.

**366 Disqualification of body corporate for appointment as receiver.**

A body corporate shall not be qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be liable to a fine not exceeding one hundred pounds.

**367 Disqualification of undischarged bankrupt from acting as receiver or manager.**

- (1) If any person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to the following subsection, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds or to both.
- (2) The foregoing subsection shall not apply to a receiver or manager where—
  - (a) the appointment under which he acts and the bankruptcy were both before the commencement of this Act; or
  - (b) he acts under an appointment made by order of a court.

**368 Power in England to appoint official receiver as receiver for debenture holders or creditors.**

Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

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### **369 Receivers and managers appointed out of court.**

- (1) A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions, and on any such application the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as the court thinks just.
- (2) A receiver or manager of the property of a company appointed as aforesaid shall, to the same extent as if he had been appointed by order of a court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority' or as conferring any right to indemnity in respect of that liability.
- (3) This section shall apply whether the receiver or manager was appointed before or after the commencement of this Act but subsection (2) thereof shall not apply to contracts entered into before the commencement of this Act.

### **370 Notification that receiver or manager appointed.**

- (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.
- (2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of twenty pounds.

### **371 Power of court to fix remuneration on application of liquidator.**

- (1) The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.
- (2) The power of the court under the foregoing subsection shall, where no previous order has been made with respect thereto under that subsection,—
  - (a) extend to fixing the remuneration for any period before the making of the order or the application therefor; and
  - (b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and
  - (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

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Provided that the power conferred by paragraph (c) of this subsection shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.

- (3) The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1) of this section.
- (4) This section shall apply whether the receiver or manager was appointed before or after the commencement of this Act, and to periods before, as well as to periods after, the commencement of this Act.

### **372 Provisions as to information where receiver or manager appointed.**

- (1) Where, in the case of a company registered in England, a receiver or manager of the whole or substantially the whole of the property of the company (hereafter in this section and in the next following section referred to as “the receiver”) is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this and the next following section—
  - (a) the receiver shall forthwith send notice to the company of his appointment; and
  - (b) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with the next following section a statement in the prescribed form as to the affairs of the company; and
  - (c) the receiver shall within two months after receipt of the said statement send—
    - (i) to the registrar of companies and to the court, a copy of the statement and of any comments he sees fit to make thereon and in the case of the registrar of companies also a summary of the statement and of his comments (if any) thereon; and
    - (ii) to the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect; and
    - (iii) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the said summary.
- (2) The receiver shall within two months, or such longer period as the court may allow after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the company, send to the registrar of companies, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the prescribed form showing his receipts and payments during that period of twelve months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.
- (3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect—

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- (a) with the omission of the references to the court in subsection (1); and
- (b) with the substitution for the references to the court in subsection (2) of references to the Board of Trade;

and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

- (4) Subsection (1) of this' section shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall (subject to the next following subsection) include' references to his successor and to any continuing receiver or manager.

Nothing in this subsection shall be taken as limiting the meaning of the expression“the receiver ” where used in, or in relation to, subsection (2) of this section.

- (5) This and the next following section, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (6) Nothing in subsection (2) of this section shall be taken to prejudice the duty of the receiver "to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.
- (7) If the receiver makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

### **373 Special provisions as to statement submitted to receiver.**

- (1) The statement as to the affairs of a company required by the last foregoing section to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.
- (2) The said statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—
- (a) who are or have been officers of the company;
  - (b) who have taken part in the formation of the company at any time within one year before the date of the receiver' s appointment;
  - (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the receiver capable of giving the information required;

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- (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.
- (3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.
- (4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the Board of Trade and for references to an affidavit of references to a statutory declaration; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.
- (5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.
- (6) References in this section to the receiver's successor shall include a continuing receiver or manager.

#### **374 Delivery to registrar of accounts of receivers and managers.**

- (1) Except where subsection (2) of section three hundred and seventy-two of this Act applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the registrar of companies may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the registrar of companies for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.
- (2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five pounds for every day during which the default continues.

#### **375 Enforcement of duty of receivers and managers to make returns, &c.**

- (1) If any receiver or manager of the property of a company—
  - (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or
  - (b) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him;

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the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

- (2) In the case of any such default as is mentioned in paragraph (a) of the foregoing subsection, an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies, and in the case of any such default as is mentioned in paragraph (b) of that subsection, the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.
- (3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1) of this section.

### **376 Construction of references to receivers and managers.**

It is hereby declared that, except where the context otherwise requires,—

- (a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or (as the case may be) to a receiver, of part only of that property and to a receiver only of the income arising from that property or from part thereof; and
- (b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.