

(3) An order under this section shall not prejudice or prevent—

- (a) the implementation of a compromise or arrangement approved under Part IX or Part X of this Act; or
- (b) where the application for the order was made more than twenty working days after the approval of any proposals or any revised proposals under section 407 or section 409, as the case may be, the implementation of those proposals or revised proposals.

Application to administrator of provisions relating to receivers.

426. (1) The provisions contained in sections 453, 454, 460, 468, 469 and 470 shall apply to an administrator and to a company under administration with all necessary modifications, and in particular as if—

- (a) the administrator were a receiver appointed by the court ;
- (b) references to the property in receivership were references to the property and undertaking of the company ; and
- (c) references to the grantor were references to the company.

PART XIV

FLOATING CHARGES

Company may grant floating charge.

427. (1) A company may grant a charge to which this Part of this Act applies (in this Act referred to as a “floating charge”) over the whole or any part of the property and undertaking of the company, for the purpose of securing a debt or any other obligation incurred or to be incurred by the company or any other person.

(2) A floating charge may apply to any property of the company whether held by the company at the time of creation of the floating charge or acquired thereafter, including—

- (a) movable and immovable property ;
- (b) uncalled capital ;
- (c) circulating assets, including cash, stock in trade, raw materials, book debts and other receivables.

(3) A floating charge created under this Part of this Act shall, notwithstanding the provisions contained in any other law, have effect as a security over the property of the company to which it is expressed to apply, in the manner and to the extent specified in this Part—

- (a) subject to the provisions of the Registration of Documents Ordinance (Cap. 117) where applicable ; and
- (b) subject to section 103 of the Mortgage Act (Cap. 89).

428. (1) A floating charge may be created by a company only by the execution under the name of the company in accordance with the provisions of paragraph (a) of subsection (1) of section 19, of an instrument which is expressed to create such a charge.

Instrument
creating floating
charge.

(2) An instrument which creates a floating charge over property which includes land, shall be registered under the Registration of Documents Ordinance (Cap. 117) as an instrument affecting that land.

(3) An instrument which creates a floating charge over property which includes movable property, shall be registered under the Registration of Documents Ordinance (Cap. 117) as if it were a bill of sale. Where the floating charge also

includes land, the provisions of sections 16 to 22 of the Registration of Documents Ordinance (Cap. 117) shall not in any way affect the instrument, in so far as it relates to land.

(4) The provisions of sections 17 and 20 of the Registration of Documents Ordinance (Cap. 117) shall apply in relation to a floating charge, as if registration of that floating charge—

(a) under Chapter IV of that Ordinance in the district in which the registered office of the company is situated ; and

(b) under Part VI of this Act,

were registration under Chapter IV of that Ordinance, in every district in Sri Lanka.

(5) For the avoidance of doubt, nothing in section 63 of the Mortgage Act (Cap. 89) shall apply to or in relation to any instrument creating a floating charge.

Provisions of
instrument
creating floating
charge.

429. (1) The terms specified in the Eleventh Schedule hereto shall be implied terms of every instrument which creates a floating charge, except to the extent that the terms of any such instrument expressly exclude or are inconsistent with those implied terms.

(2) An instrument creating a floating charge may contain—

(a) provisions prohibiting or restricting the creation of any fixed security or any other floating charge having priority over or ranking equally with the floating charge ; or

(b) provisions regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over that property or any part of it.

430. (1) Subject to the terms of the instrument under which it is created, the creation of a floating charge in respect of any property shall not affect the ability of the company to deal with that property in the normal course of business.

Dealing with property subject to floating charge before attachment.

(2) Where—

- (a) any property of a company is subject to a floating charge which has not attached to that property ; and
- (b) the company has sold or disposed of that property,

any person who receives that property from the company shall be liable to account to the person entitled to the benefit of the floating charge for the value of the property, in the circumstances set out in subsection (3) or subsection (4).

(3) A person may be liable to account for the value of property received by that person under subsection (2), if—

- (a) the sale or disposal of the property did not take place in the normal course of the company's business ; and
- (b) that person knew or by reason of his relationship with the company ought to have known, that the sale or disposal did not take place in the normal course of the company's business.

(4) A person may be liable to account for the value of property received by that person under subsection (2), if—

- (a) the sale or disposal of the property is a breach of the instrument creating the floating charge ; and
- (b) that person knew or by reason of his relationship with the company ought to have known, of the terms of the instrument and the circumstances giving rise to a breach of those terms.

Ranking of
floating
charges.

431. (1) Where any property of a company is subject both to a floating charge and to a fixed security arising by operation of law, the fixed security shall have priority over the floating charge.

(2) Where any property of a company is subject both to a floating charge and to a fixed security granted by the company, the fixed security shall have priority over the floating charge, unless—

- (a) the instrument creating the floating charge—
 - (i) prohibited the granting by the company of that fixed security ; and
 - (ii) had been registered under Part VI of this Act before the date on which the fixed security was granted by the company ; or
- (b) the instrument creating the floating charge is expressed to take priority over the fixed security, and the person entitled to the benefit of the fixed security has consented in writing to that priority ; or
- (c) before the date on which the fixed security was granted by the company, the floating charge had attached to the property pursuant to section 433 and either—
 - (i) a receiver had been appointed in respect of the property and the person to whom the fixed security was granted had notice of the appointment of the receiver ; or
 - (ii) the person to whom the fixed security was granted knew or by reason of his relationship with the company ought to have known, that—
 - (A) the floating charge had attached to that property ;

- (B) the grant of the fixed security was a breach of the instrument creating the floating charge ; or
- (C) the grant of the fixed security did not occur in the normal course of the company's business.

(3) Where any property of a company is subject to more than one floating charge, those floating charges shall rank among themselves according to the date of registration under Part VI, subject to any provision to the contrary in an instrument creating a floating charge which has been consented to in writing by the person entitled to the benefit of the floating charge, the priority of which is postponed by that provision.

(4) For the avoidance of doubt and subject to the terms of the instrument under which it is created, the priority of a floating charge shall not be affected by the fact that all or any part of the debts or obligations secured by that floating charge, were incurred or arose after —

- (a) the creation and registration by the company of a subsequent floating charge ; or
- (b) the grant by the company of any fixed security in respect of the whole or any part of the property comprised in the floating charge.

(5) A person shall be deemed to have received notice of the appointment of a receiver for the purposes of subsection (2), if—

- (a) the person knows or ought by reason of his relationship with the company to know that a receiver has been appointed ; or
- (b) public notice of the appointment of the receiver has been given in accordance with paragraph (b) of subsection (1) of section 440.

(6) Without limiting the provisions contained in subsection (3) of section 427, where land owned by a company is subject to a floating charge and to a fixed security which has been registered under the Registration of Documents Ordinance (Cap. 117), the fixed charge shall have priority over the floating charge, unless the floating charge was registered in respect of that land under the Registration of Documents Ordinance (Cap. 117) prior to the registration of the fixed security.

Alteration and
discharge of
floating charges.

432. (1) The terms of an instrument creating a floating charge may be varied in the same manner in which an instrument may be executed by the company.

(2) Subject to the modifications contained in subsection (3) of this section subsections (1) and (3) of section 102, sections 103 and 108 shall apply to an instrument of alteration under this section, which—

- (a) prohibits or restricts creation of any fixed security or any other floating charge having priority over or ranking equally with the floating charge ;
- (b) varies or otherwise regulates the order of and the ranking of the floating charge in relation to fixed securities or to other floating charges ;
- (c) releases property from the floating charge ; or
- (d) where the floating charge secures a specified obligation or a specified amount, alters that obligation or increases that amount, as the case may be.

(3) The provisions of subsections (1) and (3) of sections 102, 103 and 108 shall apply in respect of an instrument of alteration to which subsection (2) applies, as if—

- (a) references to a charge were references to an alteration to a floating charge ; and

- (b) references to the creation of a charge, were references to the execution of the instrument of alteration.

(4) Where an alteration to the terms of an instrument creating a floating charge has the effect of extending the floating charge to property not previously comprised in the floating charge, the priority of the floating charge in respect of the additional property shall be determined, as if the instrument by which the amendments were affected were an instrument creating a new floating charge in respect of that additional property.

(5) A floating charge may be released in respect of the whole or any part of the property comprised in it, in the same manner in which such a charge may be created.

433. (1) A floating charge shall attach to and constitute a fixed charge in respect of all property comprised in the charge, on the occurrence of any of the following events :—

Circumstances in which floating charge attaches to property.

- (a) the appointment of a receiver of the whole or any part of the property or undertaking of the company, whether under the terms of the instrument creating the floating charge or otherwise ;
- (b) the commencement of the winding up of the company ;
- (c) the disposal by the company of the whole or any part of its undertaking, other than in the normal course of its business ;
- (d) the company ceasing to carry on business ;
- (e) any other event the occurrence of which is expressed in the instrument creating the floating charge to have the effect of causing that charge to attach to the property comprised in it.

(2) Where—

- (a) a floating charge has attached to any property of a company ; and
- (b) the company sells or otherwise disposes of any property to which the charge has attached,

the person to whom the property is sold or otherwise disposed of, shall be liable to account to the person entitled to the benefit of the floating charge for the value of the property, if—

- (c) a receiver had been appointed in respect of the property and that person had notice of the appointment of the receiver ; or
- (d) that person knew or ought by reason of his relationship with the company to have known that —
 - (i) the floating charge had attached to that property ;
 - (ii) the sale or disposal was a breach of the instrument creating the floating charge ; or
 - (iii) the sale or disposal did not occur in the normal course of the company's business.

(3) Nothing in subsection (2) shall apply to a sale of property—

- (a) by or under the authority of a receiver appointed in respect of the property, by the person entitled to the benefit of the floating charge ;

- (b) pursuant to a floating charge or other security in respect of the property which ranks prior to the floating charge, to the benefit of which the person making the claim is entitled ; or
- (c) by the court.

(4) A person who is liable to account to the holder of a floating charge for the value of property disposed of by the company, shall be given credit for the value of any consideration provided to the company for that property which has become available to the holder of the floating charge, in substitution for that property.

(5) A person shall be deemed to have received notice of the appointment of receiver for the purposes of subsection (2), if—

- (a) the person knows or ought by reason of his relationship with the company to know, that a receiver has been appointed ; or
- (b) public notice of the appointment of the receiver has been given in accordance with paragraph (b) of subsection (1) of section 440.

(6) For the avoidance of doubt, where a floating charge has become a fixed charge under this section, the grantee may without prejudice to any right he may have to appoint a receiver under Part XV, exercise any other remedy which is available to the holder of a fixed charge under the Mortgage Act (Cap. 89) or under any other written law.

PART XV

RECEIVERS AND MANAGERS

Interpretation.

434. (1) In this Part of this Act, unless the context otherwise requires—

“creditor” includes a person to whom the grantor owes a debt or is under a liability, whether present or future, certain or contingent and whether an ascertained debt or liability or a liability in damages ;

“grantee” means in relation to an instrument which creates a floating charge, the person entitled to the benefit of the instrument ;

“grantor” means the person in respect of whose property a receiver is or may be appointed ;

“liquidator” means a liquidator appointed under Part XII ;

“mortgage” includes a charge on property for securing money or money’s worth ;

“mortgagee” includes a person from time to time deriving title under the original mortgagee, but does not include a receiver ;

“preferential claims” means the claims referred to in the Ninth Schedule (except paragraph 1 of that Schedule) ;

“property” includes—

(a) movable and immovable property ;

(b) an interest in movable or immovable property ;