

Repudiation by examiner of contracts made before period of protection and of negative pledge clauses whenever made: prohibitions and restrictions

525. (1) Without prejudice to subsection (2), nothing in section 524 shall enable an examiner to repudiate a contract that has been entered into by the company to which he or she has been appointed prior to the period during which the company is under the protection of the court.

(2) A provision referred to in subsection (4) shall not be binding on the company at any time after the service of the notice under subsection (3)(b) and before the expiration of the period during which the company is under the protection of the court if the following 2 conditions are satisfied.

(3) Those conditions are—

(a) the examiner is of the opinion that the provision, were it to be enforced, would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern; and

(b) the examiner serves a notice on the other party or parties to the agreement in which the provision is contained informing the party or parties of that opinion.

(4) The provision referred to in subsection (2) is a provision of an agreement entered into by the company concerned and any other person or persons at any time (including a time that is prior to the period during which the company is under the protection of the court) that provides that the company shall not, or shall not otherwise than in specified circumstances—

(a) borrow moneys or otherwise obtain credit from any person other than that person or those persons; or

(b) create or permit to subsist any mortgage, charge, lien or other encumbrance or any pledge over the whole or any part of the property or undertaking of the company.