

Power of receiver and certain others to apply to court for directions and receiver's liability on contracts

438. (1) Where a receiver of the property of a company is appointed under the powers contained in any instrument, any of the following persons may apply to the court for directions in relation to any matter in connection with the performance or otherwise, by the receiver, of his or her functions, that is to say:

(a) (i) the receiver;

(ii) an officer of the company;

(iii) a member of the company;

(iv) employees of the company comprising at least half in number of the persons employed in a permanent capacity by the company;

(v) a creditor of the company;

and

(b) (i) a liquidator;

(ii) a contributory;

and, on any such application, the court may give such directions, or make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(2) An application to the court under subsection (1), except an application under that subsection by the receiver, shall be supported by such evidence that the applicant is being unfairly prejudiced by any actual or proposed act or omission of the receiver as the court may require.

(3) For the purposes of subsection (1), "creditor" means one or more creditors to whom the company is indebted by more, in aggregate, than €13,000.

(4) A receiver of the property of a company shall be personally liable on any contract entered into by him or her in the performance of his or her functions (whether such contract is entered into by the receiver in the name of such company or in his or her own name as receiver or otherwise) unless the contract provides that he or she is not to be personally liable on such contract.

(5) In those circumstances, the receiver shall be entitled in respect of that liability to indemnity out of the assets of the company; but nothing in subsection (4) or this subsection shall be taken as—

(a) limiting any right to indemnity which the receiver would have apart from this subsection, or

(b) limiting the receiver's liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(6) Subsection (7) applies where a receiver of the property of a company has been appointed or purported to be appointed and it is subsequently discovered that the charge or purported charge in respect of which he or she was so appointed or purported to be appointed was not effective as a charge on such property or on some part of such property.

(7) Where this subsection applies, the court may, if it thinks fit, on the application of the receiver referred to in subsection (6), order that he or she be relieved wholly, or to such extent as the court shall think fit, from personal liability in respect of anything done or omitted by him or her in relation to any property purporting to be comprised in the charge by virtue of which he or she was appointed or purported to be appointed which, if such property had been effectively included in such charge or purported charge, would have been properly done or omitted by him or her and he or she shall be relieved from personal liability accordingly.

(8) In the event of such an order being made, the person by whom such receiver was appointed or purported to be appointed shall be personally liable for everything for which, but for such order, such receiver would have been liable.