



BRIEFING NOTE:

Enterprise Act 2003

From 15th September 2003, there will be new corporate insolvency provisions in force affecting the rights of floating charge holders both before and after this date.

There is also the introduction of new rights for the company, directors and unsecured creditors. Some of the more important aspects are as follows:-

Significant Changes:

- ◆ The most significant change is the **abolition** of the right of floating charge holders to appoint a receiver under their charge (although they will have the right to appoint an administrator post 15th September 2003). Note that the right to appoint a receiver remains for those floating charges created prior to the 15th September 2003.
- ◆ Post 15th September 2003 for the charge holder to be able to appoint an administrator under a floating charge the charge must conform to the rules set out in the Enterprise Act which make it a "qualifying bond and floating charge".
- ◆ There is an immediate **abolition** of the current preferential rights of the Inland Revenue and Customs & Excise. The only preferred creditors after 15th September 2003 will be the remuneration of the employees of a company, contributions to occupational health schemes and levies on coal and steel production.
- ◆ Post 15th September 2003 there will be new rights for the unsecured creditor. Whatever insolvency procedure is used (administration, receivership or liquidation) a percentage (around 10%) of the net assets must be set aside for unsecured creditors.
- ◆ There is to be a tighter timescale put in place regarding the administration process. The entire process must be completed within 12 months of commencement. The time period can be extended but not retrospectively.

New Out Of Court Route

In addition to the normal court route available to appoint an administrator or receiver there is now to be an Out of Court Route available for holders of a qualifying bond and floating charge, the Company and the directors.

In Brief:

- Administration

- New provisions – Insolvency Act 1986 /Part 11 is replaced by Schedule B1 of the Enterprise Act 2002.
- Prohibition on appointment of receivers by holders of a floating charge created post 15th September 2003.

- Receivership

- There are 6 exemptions where receivers can still be appointed under floating charges created after 15th September 2003.
- The receivership rules in the above situations remain the same.

- Other

- Crown preference rights are abolished for all cases.
- Ring fencing of approximately 10% of net assets for unsecured creditors.
- Sanctions now required for certain of a liquidators powers to be exercised.

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