



Companies Act 1985

1985 CHAPTER 6

PART XX

WINDING UP OF COMPANIES REGISTERED UNDER THIS ACT OR THE FORMER COMPANIES ACTS

CHAPTER II

WINDING UP BY THE COURT

Jurisdiction (England and Wales)

512 High Court and county court jurisdiction

- (1) The High Court has jurisdiction to wind up any company registered in England and Wales.
- (2) Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, then (subject to the provisions of this section) the county court of the district in which the company's registered office is situated has concurrent jurisdiction with the High Court to wind up the company.
- (3) The money sum for the time being specified in subsection (2) is subject to increase or reduction by regulations under section 664; but no reduction of it affects any case in which proceedings were begun before the coming into force of the reduction.
- (4) The Lord Chancellor may by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.

In exercising the powers of this section, the Lord Chancellor shall provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction in bankruptcy.

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- (5) Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up.
- (6) For purposes of this section, a company's "registered office" is the place which has longest been its registered office during the 6 months immediately preceding the presentation of the petition for winding up.

513 Proceedings taken in wrong court

- (1) Nothing in section 512 invalidates a proceeding by reason of its being taken in the wrong court
- (2) The winding up of a company by the court in England and Wales, or any proceedings in the winding up, may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

514 Proceedings in county court: case stated for High Court

If any question arises in any winding up proceedings in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court; and thereupon the special case and the proceedings for such of them as may be required shall be transmitted to the High Court for the purposes of the determination.

Jurisdiction (Scotland)

515 Court of Session and sheriff's court jurisdiction

- (1) The Court of Session has jurisdiction to wind up any company registered in Scotland.
- (2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may (subject to the provisions of this Part) be exercised by the judge acting as vacation judge in pursuance of section 4 of the Administration of Justice (Scotland) Act 1933.
- (3) Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, the sheriff court of the sheriffdom in which the company's registered office is situated has concurrent jurisdiction with the Court of Session to wind up the company; but—
 - (a) the Court of Session may, if it thinks expedient having regard to the amount of the company's assets to do so—
 - (i) remit to a sheriff court any petition presented to the Court of Session for winding up such a company, or
 - (ii) require such a petition presented to a sheriff court to be remitted to the Court of Session ; and
 - (b) the Court of Session may require any such petition as above-mentioned presented to one sheriff court to be remitted to another sheriff court; and

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- (c) in a winding up in the sheriff court it is lawful for the sheriff to submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.
- (4) For the purposes of this section, the expression " registered office " means the place which has longest been the company's registered office during the 6 months immediately preceding the presentation of the petition for winding up.
- (5) The money sum for the time being specified in subsection (3) is subject to increase or reduction by regulations under section 664; but no reduction of it affects any case in which proceedings were begun before the coming into force of the reduction.

516 Power to remit winding up to Lord Ordinary

- (1) The Court of Session may, by Act of Sederunt, make provision for the taking of proceedings in a winding up before one of the Lords Ordinary ; and, where provision is so made, the Lord Ordinary has, for the purposes of the winding up, all the powers and jurisdiction of the court.
- (2) However, the Lord Ordinary may report to the Inner House any matter which may arise in the course of a winding up.

Grounds and effect of winding-up petition

517 Circumstances in which company may be wound up by the court

- (1) A company may be wound up by the court if—
 - (a) the company has by special resolution resolved that the company be wound up by the court.
 - (b) being a public company which was registered as such on its original incorporation, the company has not been issued with a certificate under section 117 (public company share capital requirements) and more than a year has expired since it was so registered.
 - (c) it is an old public company, within the meaning of section 1 of the Consequential Provisions Act.
 - (d) the company does not commence its business within a year from its incorporation or suspends its business for a whole year,
 - (e) the number of members is reduced below 2,
 - (f) the company is unable to pay its debts,
 - (g) the court is of the opinion that it is just and equitable that the company should be wound up.
- (2) In Scotland, a company which the Court of Session has jurisdiction to wind up may be wound up by the Court if there is subsisting a floating charge over property comprised in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the Court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

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518 Definition of inability to pay debts

- (1) A company is deemed unable to pay its debts—
- (a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
 - (b) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
 - (c) if, in Scotland, the *induciae* of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
 - (d) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company, or
 - (e) if it is proved to the satisfaction of the court that the company is unable to pay its debts (and, in determining that question, the court shall take into account the company's contingent and prospective liabilities).
- (2) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by regulations under section 664: but no increase of it affects any case in which the winding-up petition was presented before the coming into force of the increase.

519 Application for winding up

- (1) Subject to the provisions of this section, an application to the court for the winding up of a company shall be by petition presented either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately.
- (2) Except as mentioned below, a contributory is not entitled to present a winding-up petition unless either—
- (a) the number of members is reduced below 2, or
 - (b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.
- (3) A person who is liable under section 504 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in section 517(1)(f) and (g), and subsection (2) above does not then apply; but unless the person is a contributory otherwise than under section 504 he may not in his character as contributory petition on any other ground.

This subsection is deemed included in Chapter VII of Part V for the purposes of the Secretary of State's power to make regulations under section 179.

- (4) If the ground of the petition is that in section 517(1)(b) or (c), a winding-up petition may be presented by the Secretary of State.

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- (5) The court shall not hear a petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable (or until caution is found, if so ordered by a Scottish court) and until a prima facie case for winding up has been established to the satisfaction of the court.
- (6) In a case falling within section 440 (expedient in the public interest, following report of inspectors, etc.) a winding-up petition may be presented by the Secretary of State.
- (7) Where a company is being wound up voluntarily or subject to supervision in England and Wales, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section ; but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

520 Powers of court on hearing of petition

- (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding-up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.
- (2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion—
 - (a) that the petitioners are entitled to relief either by winding up the company or by some other means, and
 - (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

521 Power to stay or restrain proceedings against company

- (1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—
 - (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England and Wales or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein, and
 - (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding,

and the court to which application is so made may (as the case may be) stay, sist or restrain the proceedings accordingly on such terms as it thinks fit

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- (2) In the case of a company registered under section 680, where the application to stay, sist or restrain is by a creditor, this section extends to actions and proceedings against any contributory of the company.

522 Avoidance of property dispositions, etc.

In a winding up by the court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void.

523 Avoidance of attachments, etc.

- (1) Where a company registered in England and Wales is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void.
- (2) This section, so far as relates to any estate or effects of the company situated in England and Wales, applies in the case of a company registered in Scotland as it applies in the case of a company registered in England and Wales.

Commencement of winding up

524 Commencement of winding up by the court

- (1) If, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution ; and unless the court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.
- (2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.

525 Consequences of winding-up order

- (1) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar of companies, who shall enter it in his records relating to the company.
- (2) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.
- (3) When an order has been made for winding up a company registered under section 680, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company, in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.
- (4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

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The official receiver (England and Wales only)

526 The official receiver

- (1) For the purposes of this Act as it relates to the winding up of companies by the court in England and Wales, the term "official receiver" means the official receiver (if any) attached to the court for bankruptcy purposes or, if there is more than one such official receiver, then such one of them as the Secretary of State may appoint or, if there is no such official receiver, then an officer appointed for the purpose by the Secretary of State.
- (2) Any such officer shall, for the purpose of his duties under this Act, be styled "the official receiver".

527 Appointment of official receiver by court in certain cases

- (1) If in the case of the winding up of a company by the court in England and Wales it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer other than the person who would under section 526 be the official receiver should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act.
- (2) The officer so appointed is then deemed, for all purposes of this Act, to be the official receiver in that winding up.

528 Statement of company's affairs

- (1) Where the court in England and Wales has made a winding-up order or appointed a provisional liquidator, there shall (unless the court otherwise orders) be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form.
- (2) The statement shall be verified by affidavit and show particulars of the company's assets, its 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 or as the official receiver may require.
- (3) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who at that date is the secretary of the company, or by such of the persons mentioned in the following subsection as the official receiver (subject to the direction of the court) may require to submit and verify the statement.
- (4) The persons referred to above are—
 - (a) those who are or have been officers of the company,
 - (b) those who have taken part in the formation of the company at any time within one year before the relevant date,
 - (c) those who are in the employment of the company, or have been in its employment within the year just mentioned, and are in the opinion of the official receiver capable of giving the information required, and

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- (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company to which the statement relates.
- (5) For purposes of this section, " the relevant date " is—
 - (a) in a case where a provisional liquidator is appointed the date of his appointment, and
 - (b) in a case where no such appointment is made, the date of the winding-up order.
- (6) The statement of affairs required by this section shall be submitted within 14 days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.
- (7) If a person, without reasonable excuse, makes default in complying with the requirements of this section, he is liable to a fine and, for continued contravention, to a daily default fine.

529 Further provisions as to statement etc. under s. 528

- (1) A person making or concurring in the making of the statement and affidavit required by section 528 shall be allowed, and shall be paid by the official receiver or provisional liquidator (as the case may be) out of the company's assets such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.
- (2) A person stating himself in writing to be a creditor or contributory of the company is entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted under section 528, and to a copy of or extract from it.
- (3) A person untruthfully so stating himself to be a creditor or contributory is guilty of a contempt of court and, on the application of the official receiver or the liquidator, punishable accordingly.
- (4) The statement required by section 528 may be used in evidence against any person making or concurring in making it

530 Report by official receiver

- (1) When a winding-up order is made, the official receiver shall, as soon as practicable after the receipt of the statement to be submitted under section 528 (or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order) submit a preliminary report to the court—
 - (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities, and
 - (b) if the company has failed, as to the causes of the failure, and
 - (c) whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of its business.
- (2) The official receiver may also, if he thinks fit, make further reports (one or more) stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any

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officer of the company in relation to it since its formation, and any other matter which in his opinion it is desirable to bring to the notice of the court

- (3) If the official receiver states in any such further report that in his opinion a fraud has been committed as above-mentioned, the court has the further powers provided in sections 563 and 564 (public examination of promoters and officers).

Liquidators

531 Power of court to appoint liquidators

For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

532 Appointment and powers of provisional liquidator

- (1) Subject to the provisions of this section, the court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.
- (2) In England and Wales, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.
- (3) In Scotland, such an appointment may be made at any time before the first appointment of liquidators.
- (4) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him.

533 Appointment, style, etc., of liquidators in England and Wales

- (1) The following provisions with respect to liquidators have effect on a winding-up order being made in England and Wales.
- (2) The official receiver by virtue of his office becomes the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.
- (3) The official receiver shall summon separate meetings of the company's creditors and contributories for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver.
- (4) The court may make any appointment and order required to give effect to that determination; and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter in question, the court shall decide the difference and make such order thereon as it may think fit.
- (5) If a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company.
- (6) The official receiver is, ex officio, the liquidator during any vacancy.
- (7) A liquidator shall be described, where a person other than the official receiver is liquidator, by the style of " the liquidator " and, where the official receiver is liquidator,

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by the style of " the official receiver and liquidator ", of the particular company in respect of which he is appointed (and not by his individual name).

534 Liquidator other than official receiver

If in the winding up of a company by the court in England and Wales a person other than the official receiver is appointed liquidator, that person—

- (a) cannot act as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Secretary of State,
- (b) shall give the official receiver such information, and such access to and facilities for inspecting the company's books and documents, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

535 Liquidators in Scotland

- (1) The following provisions with respect to liquidators have effect in a winding up by the court in Scotland.
- (2) The court may determine whether any and what caution is to be found by a liquidator on his appointment.
- (3) A liquidator shall be described by the style of " the official liquidator " of the particular company in respect of which he is appointed (and not by his individual name).
- (4) Where an order has been made for winding up a company subject to supervision and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by a subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

536 General provisions as to liquidators

- (1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court
- (2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.
- (3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court
- (4) If more than one liquidator is appointed by the court the court shall declare whether any act required or authorised by this Act to be done by the liquidator is to be done by all or any one or more of the persons appointed.
- (5) Subject to section 634 (disqualification of bodies corporate for appointment as liquidator), the acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

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537 Custody of company's property

- (1) When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.
- (2) In a winding up by the court in Scotland, if and so long as there is no liquidator, all the property of the company is deemed to be in the custody of the court.

538 Vesting of company property in liquidator

- (1) When a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.
- (2) The liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

539 Powers of liquidator

- (1) The liquidator in a winding up by the court has power, with the sanction either of the court or of the committee of inspection—
 - (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company,
 - (b) to carry on the business of the company so far as may be necessary for its beneficial winding up,
 - (c) to appoint a solicitor to assist him in the performance of his duties,
 - (d) to pay any class of creditors in full,
 - (e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.
 - (f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it
- (2) The liquidator in a winding up by the court has the power—
 - (a) to sell any of the company's property by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels,

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- (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal,
 - (c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors,
 - (d) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business,
 - (e) to raise on the security of the assets of the company any money requisite,
 - (f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company (and in all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself),
 - (g) to appoint an agent to do any business which the liquidator is unable to do himself,
 - (h) to do all such other things as may be necessary for winding up the company's affairs and distributing its assets.
- (3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section is subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.
- (4) In the case of a winding up in Scotland, the court may provide by order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in subsection (1)(a) or (b) without the sanction or intervention of the court
- (5) In a winding up by the court in Scotland, the liquidator has (subject to general rules), the same powers as a trustee on a bankrupt estate.

Provisions about liquidators applying in England and Wales only

540 Exercise and control of liquidator's powers

- (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England and Wales shall, in the administration of the company's assets and their distribution among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection.
- (2) Directions given by the creditors or contributories at any general meeting are, in case of conflict, deemed to override any directions given by the committee of inspection.
- (3) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing

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the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).

- (4) The liquidator may apply to the court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.
- (5) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.
- (6) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just.

541 Books to be kept by liquidator

- (1) Every liquidator of a company which is being wound up by the court in England and Wales shall keep, in the prescribed manner, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed.
- (2) Any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

542 Payments by liquidator into bank

- (1) The following applies to a liquidator of a company which is being wound up by the court in England and Wales.
- (2) Subject to the next subsection, the liquidator shall, in such manner and at such times as the Secretary of State (with the concurrence of the Treasury) directs, pay the money received by him to the Insolvency Services Account at the Bank of England ; and the Secretary of State shall furnish him with a certificate of receipt of the money so paid.
- (3) However, if the committee of inspection satisfies the Secretary of State that for the purpose of carrying on the company's business or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account at any other bank, the Secretary of State shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.
- (4) If the liquidator at any time retains for more than 10 days a sum exceeding £100 or such other amount as the Secretary of State in any particular case authorises him to retain, then unless he explains the retention to the Secretary of State's satisfaction, he shall pay interest on the amount so retained in excess at the rate of 20 per cent, per annum, and is liable to disallowance of all or such part of his remuneration as the Secretary of State thinks just, and to be removed from his office by the Secretary of State, and is liable to pay any expenses occasioned by reason of his default.
- (5) The liquidator shall not pay any sums received by him as liquidator into his private banking account.
- (6) The money sum for the time being specified in subsection (4) is subject to increase or reduction by regulations under section 664.

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543 Submission of liquidator's accounts for audit.

- (1) The following applies in the case of a company which is being wound up by the court in England and Wales.
- (2) The liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Secretary of State (or as he directs) an account of his receipts and payments as liquidator.
- (3) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form; and the Secretary of State may cause the account to be audited.
- (4) The liquidator shall furnish the Secretary of State with such vouchers and information as he requires, and the Secretary of State may at any time require the production of, and inspect, any books or accounts kept by the liquidator.

This applies whether or not the Secretary of State decides to cause the account to be audited, and extends to production and inspection at the liquidator's premises.

- (5) After the account has been audited (or, as the case may be, forthwith if the Secretary of State decides not to have an audit) one copy of the account shall be filed by the Secretary of State, to be retained by him, and the other copy shall be delivered to the court for filing, each copy when filed to be open to inspection by any person on payment of the prescribed fee.
- (6) The liquidator shall, when the account has been audited (alternatively, when he has been notified of the Secretary of State's decision not to have an audit), cause the account, or a summary of it, to be printed, and shall send a printed copy by post to every creditor or contributory.

The Secretary of State may in any case dispense with compliance with this subsection.

544 Control of liquidators by Secretary of State.

- (1) The Secretary of State shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England and Wales; and—
 - (a) if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties, or
 - (b) if any complaint is made to the Secretary of State by any creditor or contributory in regard thereto,the Secretary of State shall inquire into the matter, and take such action on it as he thinks expedient
- (2) The Secretary of State may at any time require the liquidator to answer any inquiry in relation to a winding up in which he is engaged and may, if the Secretary of State thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.
- (3) The Secretary of State may also direct a local investigation to be made of the liquidator's books and vouchers.

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545 Release of liquidators.

- (1) The following applies to the liquidator of a company which is being wound up by the court in England and Wales.
- (2) When the liquidator has realised all the company's property, or so much of it as can (in his opinion) be realised without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors, and adjusted the rights of the contributories among themselves, and made a final return (if any) to the contributories, or has resigned, or has been removed from his office, the following subsection has effect
- (3) The Secretary of State shall, on the liquidator's application, cause a report on the latter's accounts to be prepared and, on his complying with all the Secretary of State's requirements, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.
- (4) If the release of the liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
- (5) An order of the Secretary of State releasing the liquidator discharges him from all liability in respect of any act done or default made by him in the administration of the company's affairs or otherwise in relation to his conduct as liquidator; but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (6) If the liquidator has not previously resigned or been removed, his release operates as removal of him from his office.

Committees of inspection

546 Decision whether committee of inspection to be appointed.

- (1) When a winding-up order has been made by the court in England and Wales, and separate meetings of creditors and contributories have been summoned for the purpose of determining whether an application should be made to the court for the appointment of a liquidator in place of the official receiver, it is the business of those meetings to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be members of the committee if appointed.
- (2) In Scotland, when a winding-up order has been made by the court, the liquidator shall summon separate meetings of the company's creditors and contributories for the purpose of determining whether or not an application is to be made to the court for the appointment of a committee of inspection and who are to be the members of the committee if appointed.

However, if the winding-up order has been made on the ground that the company is unable to pay its debts, it is not necessary for the liquidator to summon a meeting of the contributories.

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- (3) The court may make the appointment and order required to give effect to such determination ; and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters referred to above, the court shall decide the difference and make such order on those matters as the court may think fit.

547 Constitution and proceedings of committee of inspection

- (1) Subject as follows, the committee of inspection (if appointed) shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court
- (2) In Scotland—
- (a) if a winding-up order has been made on the ground that the company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors, and
 - (b) the committee has, in addition to the powers and duties conferred and imposed on it by this Act, such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on committees of inspection by general rules.
- (3) Schedule 17 has effect with respect to the committee of inspection and its proceedings.

548 Power of Secretary of State to act in place of committee

If in the case of a winding up in England and Wales there is no committee of inspection, the Secretary of State may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

General powers of court in case of winding up by the court

549 Power to stay or sist winding up

- (1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in the winding up ought to be stayed or sisted, make an order staying or sisting the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.
- (2) The court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.
- (3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

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550 Settlement of list of contributories and application of assets

- (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the company's assets to be collected, and applied in discharge of its liabilities.
- (2) If it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.
- (3) In settling the list, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

551 Delivery of property to liquidator

The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith (or within such time as the court directs) to the liquidator any money, property or books and papers in his hands to which the company is prima facie entitled.

552 Debts due from contributory to company

- (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him (or from the estate of the person whom he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act
- (2) The court in making such an order may—
 - (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit and
 - (b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.
- (3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

553 Power to make calls

- (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the company's debts and liabilities, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.
- (2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it

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554 Payment into bank of money due to company

- (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England (or any branch of it) to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.
- (2) All money and securities paid or delivered into the Bank of England (or branch) in the event of a winding up by the court are subject in all respects to the orders of the court.

555 Order on contributory to be conclusive evidence

- (1) An order made by the court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.
- (2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings, except proceedings in Scotland against the heritable estate of a deceased contributory; and in that case the order is only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

556 Appointment of special manager (England and Wales)

- (1) Where in proceedings in England and Wales the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the company's estate or business, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business other than himself, apply to the court.
- (2) The court may on the application appoint a special manager of the company's estate or business to act during such time as the court may direct, with such powers (including any of the powers of a receiver or manager) as may be entrusted to him by the court.
- (3) The special manager shall give such security and account in such manner as the Secretary of State directs, and shall receive such remuneration as may be fixed by the court.

557 Power to exclude creditors not proving in time

The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

558 Adjustment of rights of contributories

The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it

559 Inspection of books by creditors and contributories

- (1) The court may, at any time after making a winding-up order, make such order for inspection of the company's books and papers by creditors and contributories as the

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court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

- (2) Nothing in this section excludes or restricts any statutory rights of a government department or person acting under the authority of a government department.

560 Costs of winding up may be made payable out of assets

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just

561 Summoning of persons suspected of having company property, etc.

- (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.
- (2) The court may examine the officer or other person summoned on oath concerning those matters either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.
- (3) The court may require him to produce any books and papers in his custody or power relating to the company; but if he claims any lien on books or papers produced by him, the production is without prejudice to that lien, and the court has jurisdiction in the winding up to determine all questions relating to that lien.
- (4) If a person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

562 Attendance at company meetings (Scotland)

In the winding up by the court of a company registered in Scotland, the court has power to require the attendance of any officer of the company at any meeting of creditors or of contributories, or of a committee of inspection, for the purpose of giving information as to the trade, dealings, affairs or property of the company.

563 Public examination of promoters and officers (England and Wales.)

- (1) Where an order has been made in England and Wales for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to it since its formation, the following applies.
- (2) The court may, after consideration of the report, direct (hat that person or officer shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation of the company, or the conduct of its business, or as to the conduct or dealings of that person as an officer of it.

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- (3) The official receiver shall take part in the examination and for that purpose may, if specially authorised by the Secretary of State in that behalf, employ a solicitor with or without counsel.
- (4) The liquidator (where the official receiver is not the liquidator) and any creditor or contributory may also take part in the examination either personally or by solicitor or counsel.

564 Procedure under s. 563

- (1) On a public examination ordered by the court under section 563, the court may put such questions to the person examined as it thinks fit.
- (2) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.
- (3) The person shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who is at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.
- (4) If the person applies to the court to be exculpated from any charges made or suggested against him, it is the duty of the official receiver to appear on the bearing of the application and call the court's attention to any matters which appear to him to be relevant; and if the court, after hearing evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it thinks fit.
- (5) Notes of a person's public examination shall be taken down in writing, and shall be read over to or by, and signed by, him and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.
- (6) The court may, if it thinks fit, adjourn the examination from time to time.
- (7) The examination may, if the court so directs (and subject to general rules) be held before any Circuit judge, or before any officer of the Supreme Court being an official referee, master or registrar in bankruptcy, or before a district registrar of the High Court named for the purpose by the Lord Chancellor; and the powers of the court under this section may be exercised by the person before whom the examination is held.

565 Power to arrest absconding contributory

The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the company's affairs, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the court may order.

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566 Powers of court to be cumulative

Powers conferred by this Act on the court are in addition to and not in restriction of any existing powers of instituting proceedings against a contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

567 Delegation of powers to liquidator (England and Wales)

- (1) Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England and Wales by this Act in respect of the following matters—
 - (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,
 - (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,
 - (c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator.
 - (d) the making of calls,
 - (e) the fixing of a time within which debts and claims must be proved,to be exercised or performed by the liquidator as an officer of the court, and subject to the court's control.
- (2) But the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the committee of inspection.

568 Dissolution of company

- (1) When the company's affairs have been completely wound up, the court (if the liquidator makes an application in that behalf) shall make an order that the company be dissolved from the date of the order, and the company is then dissolved accordingly.
- (2) A copy of the order shall within 14 days from its date be forwarded by the liquidator to the registrar of companies who shall record the company's dissolution.
- (3) If the liquidator makes default in complying with the requirements of subsection (2), he is liable to a fine and, for continued contravention, to a daily default fine.

Enforcement of, and appeal from, orders

569 Orders for calls on contributories (Scotland)

- (1) In Scotland, where an order, interlocutor or decree has been made for winding up a company by the court, it is competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when that amount became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from that date until payment (at 5 per cent, per annum) in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of 6 days, of a legal obligation to pay those calls and interest.

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- (2) The decree may be extracted immediately, and no suspension of it is competent, except on caution or consignment, unless with special leave of the court.

570 Enforcement throughout United Kingdom of orders made in winding up

- (1) An order made by the court in England and Wales for or in the course of winding up a company shall be enforced in Scotland and Northern Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Northern Ireland and in the same manner in all respects as if the order had been made by those courts.
- (2) Orders, interlocutors and decrees made by the court in Scotland for or in the course of winding up a company shall in like manner be enforced in England and Wales and Northern Ireland by any court which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by that court.
- (3) Where an order, interlocutor or decree made by one court is required to be enforced by another court, an office copy of it shall be produced to the proper officer of the court required to enforce it
- (4) The production of an office copy is sufficient evidence of the order, interlocutor or decree; and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing it in the same manner as if it had been made by that court
- (5) This section extends to Northern Ireland.

571 Appeals from orders in Scotland

- (1) Subject to the provisions of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act lies in the same manner and subject to the same conditions as an appeal from an order or decision of the court in cases within its ordinary jurisdiction.
- (2) In regard to orders or judgments pronounced by the judge acting as vacation judge in pursuance of section 4 of the Administration of Justice (Scotland) Act 1933—
- (a) none of the orders specified in Part I of Schedule 16 to this Act are subject to review, reduction, suspension or stay of execution, and
 - (b) every other order or judgment (except as mentioned below) may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from the date of the order or judgment.
- (3) However, an order being one of those specified in Part II of the Schedule shall, from the date of the order and notwithstanding that it has been submitted to review as above, be carried out and receive effect until the Inner House have disposed of the matter.
- (4) In regard to orders or judgments pronounced in Scotland by a Lord Ordinary before whom proceedings in a winding up are being taken, any such order or judgment may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from its date; but should it not be so submitted to review during session, the provisions of this section in regard to orders or judgments pronounced by the judge acting as vacation judge apply.

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- (5) Nothing in this section affects provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntary or by, or subject to the supervision of, the court