



# Insolvency Act 1985

## 1985 CHAPTER 65

### PART II

#### COMPANY INSOLVENCY ETC

### CHAPTER VI

#### WINDING UP

##### *Voluntary winding Up*

#### **82 No liquidator appointed or nominated by company in voluntary winding up**

- (1) This Section applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.
- (2) The powers of the directors of the company shall not be exercised, except with the sanction of the court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with section 85 below, during the period before the appointment or nomination of a liquidator of the company.
- (3) Subsection (2) above does not apply in relation to the powers of the directors of the company—
  - (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
  - (b) to do all such other things as may be necessary for the protection of the company's assets.
- (4) If the directors of the company without reasonable excuse fall to comply with this section, they shall be liable on summary conviction to a fine not exceeding the statutory maximum.

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### **83 Effect of insolvency on members' voluntary winding up**

- (1) This section applies where, in the case of a members' voluntary winding up, the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the rate applicable under section 93 below) within the period stated in the directors' declaration under section 577 of the 1985 Act
- (2) The liquidator shall—
  - (a) summon a meeting of creditors for a day not later than the twenty-eighth day after the day on which he formed the opinion mentioned in subsection (1) above ;
  - (b) send notices of the creditors' meeting to the creditors by post not less than seven days before the day on which that meeting is to be held;
  - (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality, that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period; and
  - (d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;and the notice of the creditors' meeting shall state the duty imposed by paragraph (d) above.
- (3) The liquidator shall also—
  - (a) make out a statement in the prescribed form as to the affairs of the company;
  - (b) lay that statement before the creditors' meeting; and
  - (c) attend and preside at that meeting.
- (4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator and shall show—
  - (a) particulars of the company's assets, debts and liabilities;
  - (b) the names and addresses of the company's creditors;
  - (c) the securities held by them respectively;
  - (d) the dates when the securities were respectively given ; and
  - (e) such further or other information as may be prescribed.
- (5) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duty imposed by subsection (2)(c) above shall apply separately in relation to each of those localities.
- (6) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (5) above to the company's principal place of business in Great Britain shall be construed as references to the company's registered office.
- (7) As from the day on which the creditors' meeting is held, this Part and the 1985 Act shall have effect as if—
  - (a) the directors' declaration under section 577 of that Act had not been made ; and
  - (b) the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 85 below;

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and, accordingly, the winding up shall become a creditors' voluntary winding up and any appointment made or committee established by the creditors' meeting shall be deemed to have been made or established by the creditors' meeting so mentioned.

- (8) Where the creditors' meeting is held three months or less before the end of the first year from the commencement of the winding up, nothing in section 594 of the 1985 Act (as applied by subsection (7) above) shall require the liquidator to summon a meeting of creditors at the end of that year.
- (9) In this section " the relevant period " means the period of six months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.
- (10) If the liquidator without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding the statutory maximum.

#### **84 Liquidator nominated by company in creditors' voluntary winding up**

- (1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.
- (2) The powers conferred on the liquidator by section 598 of the 1985 Act shall not be exercised, except with the sanction of the court, during the period before the holding of the creditors' meeting mentioned in section 85 below.
- (3) Subsection (2) above does not apply in relation to the power of the liquidator—
  - (a) to take into his custody or under his control all the property to which the company is or appears to be entitled;
  - (b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
  - (c) to do all such other things as may be necessary for the protection of the company's assets.
- (4) The liquidator shall attend the creditors' meeting held under section 85 below and shall report to the meeting on any exercise by him of his powers (whether or not under this section or under section 598 or 602 of the 1985 Act).
- (5) If default is made—
  - (a) by the company in complying with subsection (2) or (3) of section 85 below ;  
or
  - (b) by the directors in complying with subsection (4) or (5) of that section,  
the liquidator shall, within seven days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.
- (6) In subsection (5) above "the relevant day" means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.
- (7) If the liquidator without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding the statutory maximum.

#### **85 Meeting of creditors in creditors' voluntary winding up**

- (1) This section applies in relation to a creditors' voluntary winding up.

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- (2) The company shall—
- (a) cause a meeting of its creditors to be summoned for a day not later than the fourteenth day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed ;
  - (b) cause the notices of the creditors' meeting to be sent by post to the creditors not less than seven days before the day on which that meeting is to be held ; and
  - (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality, that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period.
- (3) The notice of the creditors' meeting shall state either—
- (a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require ;  
or
  - (b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.
- (4) The directors of the company shall—
- (a) make out a statement in the prescribed form as to the affairs of the company ;
  - (b) cause that statement to be laid before the creditors' meeting; and
  - (c) appoint one of their number to preside at that meeting;
- and it is the duty of the director so appointed to attend the meeting and preside over it.
- (5) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors of the company and shall show—
- (a) particulars of the company's assets, debts and liabilities;
  - (b) the names and addresses of the company's creditors ;
  - (c) the securities held by them respectively ;
  - (d) the dates when the securities were respectively given; and
  - (e) such further or other information as may be prescribed.
- (6) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (2)(c) and (3) (b) above shall apply separately in relation to each of those localities.
- (7) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (6) above to the company's principal place of business in Great Britain shall be construed as references to the company's registered office.
- (8) In this section " the relevant period " means the period of six months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.
- (9) If—

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- (a) the company without reasonable excuse fails to comply with subsection (2) or (3) above ;
  - (b) the directors without reasonable excuse fail to comply with subsection (4) or (5) above ; or
  - (c) any director without reasonable excuse fails to comply with subsection (4) above, so far as requiring him to attend and preside at the creditors' meeting, the company, the directors or the director (as the case may be) shall be guilty of an offence.
- (10) A person guilty of an offence under subsection (9) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

## **86 Removal etc. of liquidator in voluntary winding up**

- (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.
- (2) Subject to subsection (3) below, a liquidator may be removed from office only by an order of the court or—
- (a) in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose ; or
  - (b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.
- (3) Where a liquidator was appointed by the court under section 599 of the 1985 Act, a meeting such as is mentioned in subsection (2) above shall be summoned for the purpose of replacing him only if the liquidator thinks fit or the court so directs or the meeting is requested, in accordance with the rules—
- (a) in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting ; or
  - (b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors.
- (4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar of companies.
- (6) Where—
- (a) in the case of a members' voluntary winding up, a final meeting of the company has been held under section 585 of the 1985 Act; or
  - (b) in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under section 595 of that Act,
- the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with subsection (3) of that section and has given notice to the registrar of companies that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.

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## **87 Release of liquidator in voluntary winding up**

- (1) This section applies with respect to the release of the liquidator of a company which is being wound up voluntarily.
- (2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—
  - (a) in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the registrar of companies in accordance with the rules that that person has ceased to hold office;
  - (b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release or by the court or who has vacated office under subsection (4) of section 86 above, such time as the Secretary of State may, on the application of that person, determine ;
  - (c) in the case of a person who has resigned, such time as may be prescribed;
  - (d) in the case of a person who has vacated office under subsection (6)(a) of section 86 above, the time at which he vacated office;
  - (e) in the case of a person who has vacated office under subsection (6)(b) of that section—
    - (i) if the final meeting of the creditors referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine ; and
    - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.
- (3) In the application of subsection (2) above to the winding up of a company registered in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator shall have his release shall be construed as references to such a determination by the Accountant of Court.
- (4) Where a liquidator has his release under subsection (2) above, he shall, with effect from the time specified in that subsection, be discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under subsection (2) above, of the court's powers under section 19 above.