



# Insolvency Act 1985

## 1985 CHAPTER 65

### PART II

#### COMPANY INSOLVENCY ETC

### CHAPTER VI

#### WINDING UP

##### *Winding up by the court*

#### **66 Company's statement of affairs**

- (1) Where the court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it 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 or as the official receiver may require.
- (3) The persons referred to in subsection (1) 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;

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- (c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
  - (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.
- (4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to subsection (5) below) before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.
- (5) The official receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
  - (b) either when giving the notice mentioned in subsection (4) above or subsequently, extend the period so mentioned ;
- and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) In this section—
- " employment " includes employment under a contract for services; and
  - " the relevant date " means—
    - (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.
- (7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (8) In the application of this section to Scotland references to the official receiver shall be construed as references to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

## **67 Investigation by the official receiver**

- (1) Where a winding-up order is made by the court in England and Wales, it shall be the duty of the official receiver to investigate—
- (a) if the company has failed, the causes of the failure ; and
  - (b) generally, the promotion, formation, business, dealings and affairs of the company,
- and to make such report (if any) to the court as he thinks fit.
- (2) A report by the official receiver under this section shall, in any proceedings, be prima facie evidence of the facts stated therein.

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## 68 Public examination of officers

- (1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who—
  - (a) is or has been an officer of the company ; or
  - (b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or
  - (c) not being a person falling within paragraph (a) or (b) above, is or has been concerned, or has taken part, in the promotion, formation or management of the company.
- (2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) above if he is requested in accordance with the rules to do so by—
  - (a) one-half, in value, of the company's creditors ; or
  - (b) three-quarters, in value, of the company's contributories.
- (3) On an application under subsection (1) above, the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs or his conduct or dealings in relation to the company.
- (4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3) above, namely—
  - (a) the official receiver ;
  - (b) the liquidator of the company ;
  - (c) any person who has been appointed as special manager of the company's property or business ;
  - (d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up;
  - (e) any contributory of the company.
- (5) If a person without reasonable excuse fails at any time to attend his public examination under this section, he shall be guilty of contempt of court and liable to be punished accordingly.
- (6) In a case where a person without reasonable excuse fails at any time to attend his examination under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under this section, the court may cause a warrant to be issued to a constable or prescribed officer of the court—
  - (a) for the arrest of that person ; and
  - (b) for the seizure of any books, papers, records, money or goods in that person's possession ;

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

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## **69 General functions of liquidators**

- (1) The functions of the liquidator of a company which is being wound up by the court shall be to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.
- (2) It shall be the duty of the liquidator of a company which is being wound up by the court in England and Wales, if he is not the official receiver—
  - (a) to furnish the official receiver with such information;
  - (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records; and
  - (c) to give the official receiver such other assistance,as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.
- (3) The provisional liquidator of a company shall carry out such functions as the court may confer on him.

## **70 Functions of official receiver in relation to office of liquidator**

- (1) The following provisions of this section have effect, subject to section 73 below, on a winding-up order being made by the court in England and Wales.
- (2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the following provisions of this Chapter.
- (3) The official receiver is, by virtue of his office, the liquidator during any vacancy.
- (4) At any time when he is the liquidator of the company, the official receiver may—
  - (a) summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver; or
  - (b) apply to the Secretary of State for the appointment of a person as liquidator of the company in place of the official receiver.
- (5) It shall be the duty of the official receiver—
  - (a) as soon as practicable in the period of twelve weeks beginning with the day on which the winding-up order was made to decide whether to exercise his power under subsection (4)(a) above to summon meetings and
  - (b) if in pursuance of paragraph (a) above he decides not to exercise that power, to give notice of his decision, before the end of that period, to the court and to the company's creditors and contributories; and
  - (c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under subsection (4)(a) above if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of the company's creditors;and, accordingly, where the duty imposed by paragraph (c) above arises before the official receiver has performed a duty imposed by paragraph (a) or (b) above, he shall not be required to perform the latter duty.

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- (6) A notice given under subsection (5)(b) above to the company's creditors shall contain an explanation of the creditors' power under subsection (5)(c) above to require the official receiver to summon meetings of the company's creditors and contributories.
- (7) If meetings are held in pursuance of a decision under subsection (5)(a) above but no person is chosen to be liquidator of the company as a result of those meetings, it shall be the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (8) On an application under subsection (4)(b) above, or a reference made in pursuance of a decision under subsection (7) above, the Secretary of State shall either make an appointment or decline to make one.
- (9) Where a liquidator has been appointed by the Secretary of State under subsection (8) above, the liquidator shall give notice of his appointment to the company's creditors or, if the court so allows, shall advertise his appointment in accordance with the directions of the court and in that notice or advertisement shall—
  - (a) state whether he proposes to summon a general meeting of the company's creditors under section 74 below for the purpose of determining (together with any meeting of contributories) whether a committee should be established under that section ; and
  - (b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that section to require him to summon one.

## **71 Appointment of liquidator in Scotland**

- (1) Where a winding-up order has been made by the court in Scotland, the liquidator appointed by the court under section 535 of the 1985 Act (in this section referred to as " the interim liquidator ") shall continue in office until another person becomes liquidator in his place under this section or section 72 below.
- (2) The interim liquidator shall, subject to subsection (3) below, as soon as practicable in the period of twenty-eight days beginning with the day on which the winding-up order was made or such longer period as the court may allow, summon separate meetings of the company's creditors and contributories for the purpose of choosing a person (who may be the person who is the interim liquidator) to be liquidator of the company in place of the interim liquidator.
- (3) If it appears to the interim liquidator, in any case where a company is being wound up on grounds including its inability to pay its debts, that it would be inappropriate to summon under subsection (2) above a meeting of the company's contributories, he may summon only a meeting of the company's creditors for the purpose mentioned in that subsection.
- (4) If one or more meetings are held in pursuance of this section but no person is appointed or nominated by the meeting or meetings, the interim liquidator shall make a report to the court which shall appoint either the interim liquidator or some other person to be liquidator of the company.
- (5) A person who becomes liquidator of the company in place of the interim liquidator shall, unless he is appointed by the court, forthwith notify the court of that fact.

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## **72 Choice of liquidator at meetings of creditors and contributories**

- (1) This section applies where a company is being wound up by the court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.
- (2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator of the company.
- (3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.
- (4) In the case of different persons being nominated, any contributory or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either—
  - (a) appointing the person nominated as liquidator by the contributories to be liquidator instead of, or jointly with, the person nominated by the creditors; or
  - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

## **73 Appointment of liquidator by the court following administration or voluntary arrangement**

- (1) Where a winding-up order is made immediately upon the discharge of an administration order, the court may appoint as liquidator of the company the person who has ceased on the discharge of the administration order to be the administrator of the company.
- (2) Where a winding-up order is made at a time when there is a supervisor of a composition or scheme approved in relation to the company under Chapter II of this Part, the court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made.
- (3) Where the court makes an appointment under subsection (1) or (2) above, subsections (2) and (5)(a) and (b) of section 70 above shall not apply in relation to the winding up.

## **74 Committee of creditors etc. in England and Wales**

- (1) Where 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 choosing a person to be liquidator of the company, those meetings may establish a committee to exercise the functions conferred on it by or under this Part or the 1985 Act.
- (2) The liquidator of a company, not being the official receiver, may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is determined that one should be established, of establishing it; and the liquidator of a company who is not the official receiver shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.
- (3) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator of a company, and either the meeting of creditors or the meeting of contributories decides that a committee should be established under this section but

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the other meeting does not so decide or decides that a committee should not be so established, the committee shall be established in accordance with the rules, unless the court otherwise orders.

- (4) A committee established under this section shall not be able or required to carry out its functions at any time when the official receiver is the liquidator of the company; but at any such time the functions of such a committee shall be vested in the Secretary of State except to the extent that the rules otherwise provide.
- (5) Where in the case of any winding up there is for the time being no committee established under this section and the liquidator is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State except to the extent that the rules otherwise provide.

## **75 Committee of creditors etc. in Scotland**

- (1) Where a winding-up order has been made by the court in Scotland and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator of the company or, under section 71(3) above, only a meeting of the company's creditors has been summoned for that purpose, those meetings or, as the case may be, that meeting may establish a committee to exercise the functions conferred on it by or under this Part or the 1985 Act.
- (2) The liquidator of the company may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is determined that one should be established, of establishing it.
- (3) A liquidator appointed by the court otherwise than under section 72(4)(a) above shall be required to summon meetings under subsection (2) above if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.
- (4) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator of a company, and either the meeting of creditors or the meeting of contributories decides that a committee should be established under this section but the other meeting does not so decide or decides that a committee should not be so established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (5) Where in the case of any winding up there is for the time being no committee established under this section, the functions of such a committee shall be vested in the court except to the extent that the rules otherwise provide.
- (6) In addition to the powers and duties conferred and imposed on it by this Act and the 1985 Act, a committee established under this section shall have such of the powers and duties of commissioners in a sequestration as may be conferred and imposed on such committees by the rules.

## **76 Power of official receiver to apply for early dissolution**

- (1) The official receiver may at any time apply to the registrar of companies for the early dissolution of a company in respect of which a winding-up order has been made by the court in England and Wales if—
  - (a) he is the liquidator of the company ; and

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- (b) it appears to him—
  - (i) that the realisable assets of the company are insufficient to cover the expenses of the winding up; and
  - (ii) that the affairs of the company do not require any further investigation.
- (2) Before making an application to the registrar under subsection (1) above, the official receiver shall give not less than twenty-eight days' notice of his intention to do so to the company's creditors and contributories and, if there is an administrative receiver of the company, to that receiver.
- (3) With the giving with respect to a company of a notice under subsection (2) above the official receiver shall (subject to any directions under this section) cease to be required to perform any duties imposed on him in relation to the company, its creditors or its contributories by virtue of any provision of this Part or the 1985 Act, apart from a duty to make an application under subsection (1) above.
- (4) Where a notice has been given with respect to a company under subsection (2) above, the official receiver or any creditor or contributory of the company or the administrative receiver of the company (if there is one) may apply to the Secretary of State for directions under this section.
- (5) The grounds on which an application for directions may be made under subsection (4) above are—
  - (a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;
  - (b) that the affairs of the company do require further investigation; or
  - (c) that for any other reason the early dissolution of the company is inappropriate.
- (6) On the receipt of an application under subsection (1) above the registrar shall forthwith register it and, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved; but the Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give directions under this section at any time before the end of that period.
- (7) Directions under this section are directions making such provision as the Secretary of State thinks fit for enabling the winding up of the company to proceed as if no notice had been given under subsection (2) above and may, in the case of an application under subsection (6) above, include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.
- (8) An appeal to the court shall lie from any decision of the Secretary of State on an application for directions under this section.
- (9) It is the duty of the person on whose application any directions are given under this section, or in whose favour an appeal with respect to an application for such directions is determined, within seven days after the giving of the directions or the determination of the appeal, to deliver to the registrar for registration such a copy of the directions or determination as is prescribed.
- (10) If a person without reasonable excuse fails to deliver a copy as required by subsection (9) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.



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## **77 Early dissolution of company in Scotland**

- (1) Where a winding-up order has been made by the court in Scotland, if after a meeting or meetings have been held under section 71 above it appears to the liquidator that the realisable assets of the company are insufficient to cover the expenses of the winding up, he may apply to the court for an order that the company be dissolved.
- (2) Where the liquidator makes an application under subsection (1) above, if the court is satisfied that the realisable assets of the company are insufficient to cover the expenses of the winding up and it appears to the court appropriate to do so, the court shall make an order that the company be dissolved in accordance with this section.
- (3) A copy of the order shall within fourteen days from its date be forwarded by the liquidator to the registrar of companies who shall forthwith register it; and, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved.
- (4) The court may, on an application by any person who appears to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.
- (5) It is the duty of the person on whose application an order is made under subsection (4) above, within seven days after the making of the order, to deliver to the registrar of companies such a copy of the order as is prescribed.
- (6) If the liquidator without reasonable excuse fails to comply with the requirements of subsection (3) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.
- (7) If a person without reasonable excuse fails to deliver a copy as required by subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum, and for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

## **78 Duty of liquidator to summon final meeting**

- (1) Subject to subsection (2) below, if it appears to the liquidator of a company which is being wound up by the court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's Creditors which—
  - (a) shall receive the liquidator's report of the winding up; and
  - (b) shall determine whether the liquidator should have his release under section 80 below.
- (2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.
- (3) In the carrying out of his functions in the winding up it shall be the duty of the liquidator of a company to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this section.

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## **79 Removal of liquidator and vacation of office**

- (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 by the court or of a provisional liquidator.
- (2) Subject to the following provisions of this section, a liquidator may be removed from office only by an order of the court or by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules and a provisional liquidator may be removed from office only by an order of the court
- (3) Where—
  - (a) the official receiver is a liquidator otherwise than in succession under section 70(3) above to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories; or
  - (b) a liquidator was appointed by the court otherwise than under section 72(4)(a) or 73(1) above, or was appointed by the Secretary of State,a general meeting of the company's creditors 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, by not less than one-quarter, in value, of the company's creditors.
- (4) A liquidator who was appointed by the Secretary of State may be removed from office by a direction of the Secretary of State.
- (5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (7) Where an order is made under section 77-above for the dissolution of the company, the liquidator shall vacate office when the dissolution of the company takes effect in accordance with that section.
- (8) Where a final meeting has been held under section 78 above, the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the court and the registrar of companies that the meeting has been held and of the decisions (if any) of the meeting.

## **80 Release of liquidator**

- (1) This section applies with respect to the release of the liquidator of a company which is being wound up by the court or of a provisional liquidator.
- (2) Where the official receiver has ceased to be a liquidator and a person becomes liquidator in his stead, the official receiver shall have his release with effect from the following time, that is to say—
  - (a) in a case where that person was nominated by a general meeting of the company's creditors or contributories or was appointed by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced ;
  - (b) in a case where that person is appointed by the court, such time as the court may determine.

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- (3) If the official receiver while he is a liquidator gives notice to the Secretary of State that the winding up is for practical purposes complete, he shall have his release with effect from such time as the Secretary of State may determine.
- (4) A person other than the official receiver 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's creditors that has not resolved against his release or who has died, the time at which notice is given to the court 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 the Secretary of State or who has vacated office under section 79(5) or (7) above, such time as the Secretary of State may, on an application by 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 (8) of section 79 above—
    - (i) if the final meeting 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.
- (5) A person who has ceased to hold office as a provisional liquidator shall have his release with effect from such time as the court may, on an application by that person, determine.
- (6) Where the official receiver or a liquidator or provisional liquidator has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, 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 or provisional liquidator; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under this section, of the court's powers under section 19 above.
- (7) In the application of this section to a case where the order for winding up has been made by the court 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.

## **81 Dissolution of company**

- (1) On the receipt by the registrar of companies of a notice served for the purposes of section 79(8) above or of a notice from the official receiver that the winding up of a company by the court is complete, the registrar shall forthwith register the notice and, subject to subsections (2) and (4) below, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved.
- (2) The Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give a direction deferring

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the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.

- (3) An appeal to the court shall lie from any decision of the Secretary of State on an application for a direction under subsection (2) above.
- (4) Subsection (2) above shall not apply in a case where the winding-up order was made by the court in Scotland, but in such a case the court may, on an application by any person appearing to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.
- (5) It is the duty of the person—
  - (a) on whose application a direction is given under subsection (2) above;
  - (b) in whose favour an appeal with respect to an application for such a direction is determined; or
  - (c) on whose application an order is made under subsection (4) above,
 within seven days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the registrar for registration such a copy of the direction, determination or order as is prescribed.
- (6) If a person without reasonable excuse falls to deliver a copy as required by subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

### *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.

## **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

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(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;
- 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.

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- (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.
- (2) The company shall—

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- (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—
  - (a) the company without reasonable excuse fails to comply with subsection (2) or (3) above ;

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- (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.

### *Winding up subject to supervision of court*

## **88 Abolition of winding up subject to supervision of court**

No order shall be made under section 606 of the 1985 Act (power to order winding up under supervision of court) after the coming into force of this section.

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*Provisions applicable to every mode of winding up*

**89 Preferential debts**

- (1) In a winding up the preferential debts listed in Part I of Schedule 4 to this Act shall be paid in priority to all other debts; and Part II of that Schedule shall have effect for the interpretation of the said Part I.
- (2) Preferential debts—
  - (a) shall rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
  - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, shall have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.
- (3) Without prejudice to section 523 of the 1985 Act, where in the case of a company which is being wound up by the court in England and Wales, any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of the company in the period of three months ending with the date of the winding-up order, those goods or effects, or the proceeds of sale of those goods or effects, shall be charged for the benefit of the company with the preferential debts of the company to the extent that the property of the company is for the time being insufficient for meeting them.
- (4) Where by virtue of any charge under subsection (3) above any person surrenders any goods or effects to a company or makes a payment to a company, that person shall, in respect of the amount of the proceeds of the sale of those goods or effects by the liquidator of the company or, as the case may be, the amount of the payment, rank as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

**90 Power to appoint special manager**

- (1) Where a company has gone into liquidation or a provisional liquidator of a company has been appointed, the court may, on an application under this section, appoint any person to be the special manager of the business or property of the company.
- (2) An application under this section may be made by the liquidator or provisional liquidator of the company in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors, contributories or members generally, require the appointment of another person to manage the business or property of the company.
- (3) A special manager appointed under this section shall have such powers as may be entrusted to him by the court.
- (4) The power of the court under subsection (3) above to entrust powers to a special manager shall include power to direct that any provision of this Part or of the 1985 Act that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying

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out by the special manager of any of the functions of the provisional liquidator or liquidator.

- (5) A special manager appointed under this section shall—
- (a) give such security or, in Scotland, caution as may be prescribed;
  - (b) prepare and keep such accounts as may be prescribed; and
  - (c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

## **91 Power to disclaim onerous property**

- (1) Subject to the provisions of this section, the liquidator of a company that is being wound up in England and Wales may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this section, that is to say—
- (a) any unprofitable contract; and
  - (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) A disclaimer under this section—
- (a) shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
  - (b) shall not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.
- (4) A notice of disclaimer shall not be given under this section in respect of any property if—
- (a) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not; and
  - (b) the period of twenty-eight days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.
- (5) The disclaimer under this section of any property of a leasehold nature shall not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—
- (a) no application under section 92 below is made with respect to that property before the end of the period of fourteen days beginning with the day on which the last notice served under this subsection was served; or
  - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (6) Where the court gives a direction under subsection (5) (b) above it may also, instead of or in addition to any order it makes under section 92 below, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

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- (7) Where, in consequence of the disclaimer under this section of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person, the Crown or that person and the successors in title of the Crown or that person shall not be subject to any personal liability in respect of any sums becoming due under that rentcharge except sums becoming due after the Crown or that person or some person claiming under or through the Crown or that person has taken possession or control of the land or has entered into occupation of it.
- (8) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

## **92 Powers of court in respect of disclaimed property**

- (1) This section applies where the liquidator of a company has disclaimed any property under section 91 above.
- (2) An application may be made to the court under this section by—
  - (a) any person who claims an interest in the disclaimed property; or
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (3) Subject to subsections (4) and (5) below, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
  - (a) a person entitled to it or a trustee for such a person ; or
  - (b) a person subject to such a liability as is mentioned in subsection (2)(b) above or a trustee for such a person.
- (4) The court shall not make an order by virtue of paragraph (b) of subsection (3) above except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The court shall not make an order under this section vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—
  - (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up ; or
  - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.
- (6) For the purposes of an order under this section relating to only part of any property comprised in a lease, the requirements of subsection (5) above shall apply as if the lease comprised only the property to which the order relates.
- (7) Where subsection (5) above applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under this section on the terms required by virtue of that subsection, the court may, by order under this section, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the company) to perform the lessee's covenants in the lease; and the court may vest that

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estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

- (8) Where subsection (5) above applies and a person claiming under the company as underlessee or mortgagee declines to accept any order under this section, that person shall be excluded from all interest in the property.
- (9) The effect of any order under this section shall be taken into account in assessing for the purpose of section 91(8) above the extent of any loss or damage sustained by any person in consequence of the disclaimer
- (10) An order under this section vesting any property in any person shall not need to be completed by any conveyance, assignment or transfer.

### **93 Interest on debts**

- (1) In a winding up interest shall be payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.
- (2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.
- (3) All interest under this section shall rank equally, whether or not the debts on which it is payable rank equally.
- (4) The rate of interest payable under this section in respect of any debt shall be whichever is the greater of—
  - (a) the rate specified in section 17 of the Judgments Act 1838 on the day on which the company went into liquidation; and
  - (b) the rate applicable to that debt apart from the winding up.
- (5) In the application of this section to Scotland—
  - (a) references to a debt proved in a winding up have effect as references to a claim accepted in a winding up ; and
  - (b) the reference to section 17 of the Judgments Act 1838 shall have effect as a reference to the rules.

### **94 Style and title of liquidators**

The liquidator of a company shall be described—

- (a) where a person other than the official receiver is liquidator, by the style of " the liquidator " of the particular company; or
  - (b) where the official receiver is liquidator, by the style of " the official receiver and liquidator" of the particular company;
- and in neither case shall he be described by an individual name.