



# Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

## PART IV

### WINDING UP.

#### *Winding up by Court.*

#### **129 Circumstances in which company may be wound up by court.**

A company may be wound up by the court—

- (i) if the company has by special resolution resolved that the company be wound up by the court;
- (ii) if default is made in filing the statutory report or in holding the statutory meeting :
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year :
- (iv) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven :
- (v) if the company is unable to pay its debts :
- (vi) if the court is of opinion that it is just and equitable that the company should be wound up.

#### **130 Company when deemed unable to pay its debts.**

A company shall be deemed to be unable to pay its debts—

- (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds, then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or

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- (ii) if, in England or Ireland, 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
- (iii) if, in Scotland, the induciæ 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
- (iv) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts/the court shall take into account the contingent and prospective liabilities of the company.

### **131 Jurisdiction to wind up companies in England.**

- (1) The courts having jurisdiction to wind up companies registered in England shall be the High Court, the chancery courts of the counties palatine of Lancaster and' Durham, and the county courts.
- (2) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.
- (3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.
- (4) Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into-a contract for such working or undertaking, a petition to wind up the company shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.
- (5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890.

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.

- (6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have 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 the judge thereof or otherwise in relation to the winding up of a company.

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- (7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.
- (8) For the purposes of this section the expression “registered office ” means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

### **132 Conduct of winding-up business in High Court in England.**

Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction to wind up companies of the High Court in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, he exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

### **133 Transfer of proceedings.**

- (1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or 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.
- (2) .The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.
- (3) If any question arises in any winding-up proceeding 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, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

### **134 Jurisdiction to wind up companies in Ireland.**

The court having jurisdiction to wind up companies registered in Ireland shall be the High Court :

Provided that where the High Court in Ireland makes an order for winding up a company it may, if it thinks fit, direct that all subsequent proceedings in the winding up be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon those proceedings shall be taken in that court of bankruptcy .accordingly, and that court shall, for the purposes of the winding up, have all the powers of the High Court in Ireland.

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### **135 Jurisdiction to wind up companies in Scotland.**

The court having jurisdiction to wind up companies registered in Scotland shall be the Court of Session in either division thereof, or, in the event of a remit to a permanent Lord Ordinary, that Lord Ordinary during session, and in time of vacation the Lord Ordinary on the bills.

### **136 Power in Scotland to remit winding up to Lord Ordinary.**

Where the court in Scotland makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

### **137 Provisions as to applications for winding up.**

- (1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section 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 : Provided that
  - (a) A contributory shall not be entitled to present a petition for winding up a company unless—
    - (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ; or
    - (ii) 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 six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder ; and
  - (b) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held ; and
  - (c) The court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court.
- (2) Where a company is being wound up voluntarily or subject to supervision in England, a 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.
- (3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole

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or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

**138 Effect of winding-up order.**

An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

**139 Commencement of winding up by court.**

A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

**140 Power to stay or restrain proceedings against company.**

At any time after the presentation of a petition for winding up, 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 or 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 or restrain the proceedings accordingly on such terms as it thinks fit.

**141 Powers of court on hearing petition.**

- (1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

**142 Actions stayed on winding-up order.**

When a winding-up order has been made, 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.

**143 Copy of order to be forwarded to registrar.**

On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company.

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**144 Power of court to stay winding up.**

The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

**145 Court may have regard to wishes of creditors or contributories.**

The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.