
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PARTS II TO VI COMPANY INSOLVENCY; COMPANIES WINDING UP

PART V

**WINDING UP OF COMPANIES REGISTERED
UNDER THE COMPANIES ORDERS**

CHAPTER II

VOLUNTARY WINDING UP (INTRODUCTORY AND GENERAL)

Resolutions for, and commencement of, voluntary winding up

Circumstances in which company may be wound up voluntarily

70.—(1) A company may be wound up voluntarily—

- (a) when the period (if any) fixed for the duration of the company by its articles expires, or the event (if any) occurs, on the occurrence of which its articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it to be wound up voluntarily;
- (b) if the company resolves by special resolution that it be wound up voluntarily;
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) A resolution passed under sub-paragraph (a) of paragraph (1), as well as a special resolution under sub-paragraph (b) and an extraordinary resolution under sub-paragraph (c), is subject to Article 388 of the Companies Order (copy of resolution to be forwarded to registrar within 15 days).

Notice of resolution to wind up voluntarily

71.—(1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days from the passing of the resolution, give notice of the resolution by advertisement in the Belfast Gazette.

(2) If default is made in complying with this Article, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(3) For the purposes of paragraph (2) the liquidator is deemed an officer of the company.

Commencement of voluntary winding up

72. A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of resolution to wind up

Effect on business and status of company

73.—(1) In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2) However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

Avoidance of share transfers, etc., after winding-up resolution

74. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the company's members, made after the commencement of a voluntary winding up is void.

Declaration of solvency

Statutory declaration of solvency

75.—(1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than 2 directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in Article 5(1)), within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) Such a declaration by the directors has no effect for the purposes of this Order unless—

- (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) The declaration shall be delivered to the registrar before the expiration of 15 days from the date on which the resolution for winding up is passed.

(4) A director making a declaration under this Article without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified shall be guilty of an offence.

(5) If the company is wound up in pursuance of a resolution passed within 5 weeks from the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

(6) If a declaration required by paragraph (3) to be delivered to the registrar is not so delivered within the time specified by that paragraph, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

Distinction between “members” and “creditors” voluntary winding up

76. A winding up in the case of which a directors' statutory declaration in accordance with Article 75 has been made is a “members' voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors' voluntary winding up”.