



# Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

## PART IX

### WINDING UP OF UNREGISTERED COMPANIES.

#### **398 Meaning of unregistered company.**

For the purposes of this Part of this Act, the expression “unregistered company” shall include any trustee savings bank certified under the Trustee Savings Banks Act, 1863, and any partnership, whether limited or not, any association and any company with the following exceptions:—

- (a) a railway company incorporated by Act of Parliament, except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them;
- (b) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, the Companies Act, 1929, or this Act;
- (c) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company;
- (d) a limited partnership registered in England or Northern Ireland.

#### **399 Winding up of unregistered companies.**

- (1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in the following provisions of this section.
- (2) If an unregistered company has a principal place of business situate in Northern Ireland, it shall not be wound up under this Part of this Act unless it has a principal place of business situate in England or Scotland or in both England and Scotland.
- (3) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in England or

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Scotland, according as its principal place of business is situate in England or Scotland, or if it has a principal place of business situate in both countries, to be registered in both countries, and the principal place of business situate in that part of Great Britain in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company.

- (4) No unregistered company shall be wound up under this Act voluntarily or subject to supervision.
- (5) The circumstances in which an unregistered company may be wound up are as follows:—
- (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;
  - (b) if the company is unable to pay its debts;
  - (c) if the court is of opinion that it is just and equitable that the company should be wound up.
- (6) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts:—
- (a) 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 at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;
  - (b) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to 'his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;
  - (c) if in England or Northern Ireland execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
  - (d) if in Scotland the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;
  - (e) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.
- (7) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court or the Court of Session, according as the

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railway was authorised to be made in England or Scotland, and the special provisions of those Acts shall apply to the winding up.

- (8) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company.
- (9) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications, if any, as may be provided by rules made by statutory instrument by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

#### **400 Oversea companies may be wound up although dissolved.**

Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Part of this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

#### **401 Contributories in winding up of unregistered company.**

- (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid:

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

- (2) In the event of the death, bankruptcy or insolvency of any contributory or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories and to the liabilities of husbands and wives respectively shall apply.

#### **402 Power of court to stay or restrain proceedings.**

The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

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

Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

**404 Provisions of Part IX cumulative.**

The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up Companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

**405 Saving for enactments providing for winding up under former Companies Acts.**

Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under the Companies Act, 1929, or any enactment repealed by that Act.