



# Companies Act 1985

## 1985 CHAPTER 6

### PART XX

#### WINDING UP OF COMPANIES REGISTERED UNDER THIS ACT OR THE FORMER COMPANIES ACTS

#### CHAPTER II

##### WINDING UP BY THE COURT

*Provisions about liquidators applying in England and Wales only*

#### **540 Exercise and control of liquidator's powers**

- (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England and Wales shall, in the administration of the company's assets and their distribution among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection.
- (2) Directions given by the creditors or contributories at any general meeting are, in case of conflict, deemed to override any directions given by the committee of inspection.
- (3) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).
- (4) The liquidator may apply to the court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.
- (5) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

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- (6) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just.

#### **541 Books to be kept by liquidator**

- (1) Every liquidator of a company which is being wound up by the court in England and Wales shall keep, in the prescribed manner, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed.
- (2) Any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

#### **542 Payments by liquidator into bank**

- (1) The following applies to a liquidator of a company which is being wound up by the court in England and Wales.
- (2) Subject to the next subsection, the liquidator shall, in such manner and at such times as the Secretary of State (with the concurrence of the Treasury) directs, pay the money received by him to the Insolvency Services Account at the Bank of England ; and the Secretary of State shall furnish him with a certificate of receipt of the money so paid.
- (3) However, if the committee of inspection satisfies the Secretary of State that for the purpose of carrying on the company's business or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account at any other bank, the Secretary of State shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.
- (4) If the liquidator at any time retains for more than 10 days a sum exceeding £100 or such other amount as the Secretary of State in any particular case authorises him to retain, then unless he explains the retention to the Secretary of State's satisfaction, he shall pay interest on the amount so retained in excess at the rate of 20 per cent, per annum, and is liable to disallowance of all or such part of his remuneration as the Secretary of State thinks just, and to be removed from his office by the Secretary of State, and is liable to pay any expenses occasioned by reason of his default.
- (5) The liquidator shall not pay any sums received by him as liquidator into his private banking account.
- (6) The money sum for the time being specified in subsection (4) is subject to increase or reduction by regulations under section 664.

#### **543 Submission of liquidator's accounts for audit.**

- (1) The following applies in the case of a company which is being wound up by the court in England and Wales.
- (2) The liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Secretary of State (or as he directs) an account of his receipts and payments as liquidator.

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- (3) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form; and the Secretary of State may cause the account to be audited.
- (4) The liquidator shall furnish the Secretary of State with such vouchers and information as he requires, and the Secretary of State may at any time require the production of, and inspect, any books or accounts kept by the liquidator.

This applies whether or not the Secretary of State decides to cause the account to be audited, and extends to production and inspection at the liquidator's premises.

- (5) After the account has been audited (or, as the case may be, forthwith if the Secretary of State decides not to have an audit) one copy of the account shall be filed by the Secretary of State, to be retained by him, and the other copy shall be delivered to the court for filing, each copy when filed to be open to inspection by any person on payment of the prescribed fee.
- (6) The liquidator shall, when the account has been audited (alternatively, when he has been notified of the Secretary of State's decision not to have an audit), cause the account, or a summary of it, to be printed, and shall send a printed copy by post to every creditor or contributory.

The Secretary of State may in any case dispense with compliance with this subsection.

#### **544 Control of liquidators by Secretary of State.**

- (1) The Secretary of State shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England and Wales; and—
  - (a) if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties, or
  - (b) if any complaint is made to the Secretary of State by any creditor or contributory in regard thereto,the Secretary of State shall inquire into the matter, and take such action on it as he thinks expedient
- (2) The Secretary of State may at any time require the liquidator to answer any inquiry in relation to a winding up in which he is engaged and may, if the Secretary of State thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.
- (3) The Secretary of State may also direct a local investigation to be made of the liquidator's books and vouchers.

#### **545 Release of liquidators.**

- (1) The following applies to the liquidator of a company which is being wound up by the court in England and Wales.
- (2) When the liquidator has realised all the company's property, or so much of it as can (in his opinion) be realised without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors, and adjusted the rights of the contributories among themselves, and made a final return (if any) to the contributories,

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or has resigned, or has been removed from his office, the following subsection has effect

- (3) The Secretary of State shall, on the liquidator's application, cause a report on the latter's accounts to be prepared and, on his complying with all the Secretary of State's requirements, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.
- (4) If the release of the liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
- (5) An order of the Secretary of State releasing the liquidator discharges him from all liability in respect of any act done or default made by him in the administration of the company's affairs or otherwise in relation to his conduct as liquidator; but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (6) If the liquidator has not previously resigned or been removed, his release operates as removal of him from his office.