



# Companies Act 1985

## 1985 CHAPTER 6

### PART XX

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

#### CHAPTER III

##### VOLUNTARY WINDING UP

*Provisions applicable to a creditors' voluntary winding up*

**587 Introduction to next 8 sections**

The provisions contained in sections 588 to 595 apply in relation to a creditors' voluntary winding up.

**588 Meeting of creditors**

- (1) The company shall give at least 7 days' notice of the company meeting at which the resolution for voluntary winding up is to be proposed.

This applies notwithstanding any power of the members, or of any particular majority of the members, to exclude or waive any other requirement of this Act or the company's articles with respect to the period of notice to be given of any company meeting.

- (2) The company shall in addition—

- (a) cause a meeting of its creditors to be summoned for the day, or the day next following the day, on which the company meeting is to be held,
- (b) cause the notices of the creditors' meeting to be sent by post to the creditors simultaneously with the sending of the notices of the company meeting, and

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- (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two local newspapers circulating in the district in which the company's registered office or its principal place of business is situated.
- (3) The directors of the company shall—
- (a) cause a full statement of the position of the company's affairs, together with a list of its creditors and the estimated amount of their claims, to be laid before the creditors' meeting, and
  - (b) appoint one of their number to preside at the meeting;
- and it is the duty of the director so appointed to attend the meeting and preside at it.
- (4) If the company meeting at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the creditors' meeting held under subsection (2) has effect as if it had been passed immediately after the passing of the resolution for voluntary winding up.
- (5) If default is made—
- (a) by the company in complying with subsections (1) and (2),
  - (b) by the directors in complying with subsection (3),
  - (c) by any director in complying with that subsection, 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) is or are liable to a fine; and, in the case of default by the company, every officer of the company who is in default is also so liable.
- (6) Failure to give notice of the company meeting as required by subsection (1) does not affect the validity of any resolution passed or other thing done at that meeting which would be valid apart from that subsection.

### **589 Appointment of liquidator**

- (1) The creditors and the company at their respective meetings mentioned in section 588 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.
- (2) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator; and if no person is nominated by the creditors the person (if any) nominated by the company shall be liquidator.
- (3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—
  - (a) directing that the person nominated as liquidator by the company shall 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.

### **590 Appointment of committee of inspection**

- (1) The creditors at the meeting to be held under section 588 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons.

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- (2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.
- (3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection : and if the creditors so resolve—
  - (a) the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee, and
  - (b) on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.
- (4) Schedule 17 has effect with respect to a committee of inspection appointed under this section and its proceedings.
- (5) In Scotland, such a committee has, in addition to the powers and duties conferred and imposed on it by this Act, such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on committees of inspection by general rules.

#### **591 Remuneration of liquidator; cesser of directors' powers**

- (1) The committee of inspection or, if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator or liquidators.
- (2) On the appointment of a liquidator, all the powers of the directors cease, except so far as the committee of inspection (or, if there is no such committee, the creditors) sanction their continuance.

#### **592 Vacancy in office of liquidator**

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the court), the creditors may fill the vacancy.

#### **593 Application of s. 582 to creditors' voluntary winding up**

Section 582 applies in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the liquidator's powers under that section are not to be exercised except with the sanction either of the court or of the committee of inspection.

#### **594 Meetings of company and creditors at end of each year**

- (1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

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- (2) If the liquidator fails to comply with this section, he is liable to a fine.

### **595 Final meeting and dissolution**

- (1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.
- (2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object of the meeting, and published at least one month before it.
- (3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.
- (4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.
- (5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that subsection as to the making of the return are, in respect of that meeting, deemed complied with.
- (6) The registrar on receiving the account and, in respect of each such meeting, either of the returns mentioned above, shall forthwith register them, and on the expiration of 3 months from their registration the company is deemed to be dissolved; but the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.
- (7) It is the duty of the person on whose application an order of the court under this section is made, within 7 days after the making of the order, to deliver to the registrar an office copy of the order for registration; and if that person fails to do so he is liable to a fine and, for continued contravention, to a daily default fine.
- (8) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is liable to a fine.