



# 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

##### *Resolutions for, and commencement of, voluntary winding up*

#### **572 Circumstances in which company may be wound up voluntarily**

- (1) A company may be wound up voluntarily—
  - (a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the 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) In this Act the expression " a resolution for voluntary winding up " means a resolution passed under any of the paragraphs of subsection (1).
- (3) A resolution passed under paragraph (a) of subsection (1), as well as a special resolution under paragraph (b) and an extraordinary resolution under paragraph (c), is subject to section 380 (copy of resolution to be forwarded to registrar of companies within 15 days).

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### **573 Notice of resolution to wind up voluntarily**

- (1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.
- (2) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

For purposes of this subsection the liquidator is deemed an officer of the company.

### **574 Commencement of voluntary winding up**

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

#### *Consequences of voluntary winding up*

### **575 Effect on business and status of company**

- (1) In 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.

### **576 Avoidance of share transfers, etc., after winding up resolution**

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*

### **577 Statutory declaration of solvency**

- (1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than two 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 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 purposes of this Act 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.

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- (3) The declaration shall be delivered to the registrar of companies before the expiration of 15 days immediately following the date on which the resolution for winding up is passed.
- (4) A director making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified is liable to imprisonment or a fine, or both.
- (5) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts 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 subsection (3) to be delivered to the registrar is not so delivered within the time prescribed by that subsection, the company and every officer in default is liable to a fine and, for continued contravention, to a daily default fine.

#### **578 Distinction between " members' " and " creditors'" voluntary winding up**

A winding up in the case of which a directors' statutory declaration under section 577 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 ".

*Provisions applicable to a members' voluntary winding up*

#### **579 Introduction to next 7 sections**

The provisions contained in sections 580 to 586 apply in relation to a members' voluntary winding up.

#### **580 Company's power to appoint and fix remuneration of liquidator**

- (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets, and may fix the remuneration to be paid to him or them.
- (2) On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

#### **581 Power to fill vacancy in office of liquidator**

- (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

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## **582 Liquidator accepting shares as consideration for sale of company property**

- (1) The following applies where a company is proposed to be, or is being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (" the transferee company "), whether or not this latter is a company within the meaning of this Act.
- (2) The liquidator of the company to be, or being, wound up (" the transferor company ") may, with the sanction of a special resolution of that company, conferring either a general authority on himself or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company.
- (3) Alternatively, the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto), participate in the profits of, or receive any other benefit from, the transferee company.
- (4) A sale or arrangement in pursuance of this section is binding on members of the transferor company.
- (5) If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing addressed to the liquidator, and left at the company's registered office within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.
- (6) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.
- (7) A special resolution is not invalid for purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators ; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution is not valid unless sanctioned by the court.
- (8) For purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act 1845 or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act 1845 with respect to the settlement of disputes by arbitration are incorporated with this Act, and—
  - (a) in the construction of those provisions this Act is deemed the special Act and " the company " means the transferor company, and
  - (b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any two or more of them).

## **583 Creditors' meeting in case of insolvency**

- (1) If the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the directors' declaration under section 577, he

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shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the company's assets and liabilities.

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

#### **584 General company meeting at each year's end**

- (1) Subject to section 586, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company 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 meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

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

#### **585 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 for the purpose of laying before it the account, and giving an explanation of it
- (2) The meeting shall be called by advertisement in the Gazette, specifying its time, place and object and published at least one month before the meeting.
- (3) Within one week after the meeting, 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 meeting and of its date; and if the copy is not sent or the return is not made in accordance with this subsection the liquidator is liable to a fine and, for continued contravention, to a daily default fine.
- (4) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned above, make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of subsection (3) as to the making of the return are deemed complied with.
- (5) The registrar on receiving the account and either of these returns shall forthwith register them, and on the expiration of 3 months from the registration of the return 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.
- (6) 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.
- (7) If the liquidator fails to call a general meeting of the company as required by subsection (1), he is liable to a fine.

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### **586 Alternative provision as to company meetings in case of insolvency**

- (1) Where section 583 has effect, sections 594 and 595 apply to the winding up to the exclusion of sections 584 and 585, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up.
- (2) However, the liquidator is not required to summon a meeting of creditors under section 594 at the end of the first year from the commencement of the winding up, unless the meeting held under section 583 is held more than 3 months before the end of that year.

*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
  - (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),

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- (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.
- (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

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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.
- (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.



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- (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.

*Provisions applicable to every voluntary winding up*

**596 Introduction to next 9 sections**

The provisions of sections 597 to 605 apply to every voluntary winding up, whether a members' or a creditors' winding up.

**597 Distribution of company's property**

Subject to the provisions of this Act as to preferential payments, the company's property shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the articles otherwise provide) be distributed among the members according to their rights and interests in the company.

**598 Powers and duties of liquidator in voluntary winding up**

- (1) The liquidator may—
  - (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and
  - (b) in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection (or, if there is no such committee, a meeting of the creditors),exercise any of the powers given by paragraphs (d), (e) and (f) of section 539(1) to a liquidator in a winding up by the court.
- (2) The liquidator may, without sanction, exercise any of the other powers given by this Act to the liquidator in a winding up by the court.
- (3) The liquidator may—

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- (a) exercise the court's power of settling a list of contributories (and the list of contributories is prima facie evidence of the liability of the persons named in it to be contributories),
  - (b) exercise the court's power of making calls,
  - (c) summon general meetings of the company for the purpose of obtaining its sanction by special or extraordinary resolution or for any other purpose he may think fit
- (4) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.
- (5) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two.

#### **599 Appointment or removal of liquidator by the court**

- (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another.

#### **600 Notice by liquidator of his appointment**

- (1) The liquidator shall, within 14 days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by statutory instrument made by the Secretary of State.
- (2) If the liquidator fails to comply with this section he is liable to a fine and, for continued contravention, to a daily default fine.

#### **601 Arrangement when binding on creditors**

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors is (subject to the right of appeal under this section) binding—
  - (a) on the company, if sanctioned by an extraordinary resolution, and
  - (b) on the creditors, if acceded to by three-fourths in number and value of them.
- (2) Any creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the court against it; and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

#### **602 Reference of questions and powers to court**

- (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.
- (2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application

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on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just

- (3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

### **603 Court's power to control proceedings (Scotland)**

If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, 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.

### **604 Costs of voluntary winding up**

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

### **605 Saving for rights of creditors and contributories**

The winding up of a company under this Chapter does not bar the right of any creditor or contributory to have it wound up by the court; but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.