



# Companies Act 1985

## 1985 CHAPTER 6

### PART XX

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

### CHAPTER V

#### PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

#### *Supplementary provisions as to winding up*

#### **634 Disqualification for appointment as liquidator**

- (1) A body corporate is not qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up.
- (2) Any appointment made in contravention of this section is void; and a body corporate which acts as liquidator of a company is liable to a fine.

#### **635 Corrupt inducement affecting appointment as liquidator**

A person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator is liable to a fine.

#### **636 Enforcement of liquidator's duty to make returns, etc.**

- (1) If a liquidator who has made any default—
  - (a) in filing, delivering or making any return, account or other document, or
  - (b) in giving any notice which he is by law required to file, deliver, make or give,

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fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court has the following powers.

- (2) On an application made by any creditor or contributory of the company, or by the registrar of companies, the court may make an order directing the liquidator to make good the default within such time as may be specified in the order.
- (3) The court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.
- (4) Nothing in this section prejudices the operation of any enactment imposing penalties on a liquidator in respect of any such default as is mentioned above.

### **637 Notification that company is in liquidation**

- (1) When a company is being wound up, whether by or under supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company, or a liquidator of the company, or a receiver or manager of the company's property, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.
- (2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

### **638 In a winding up, certain documents exempt from stamp duty**

- (1) In the case of a winding up by the court, or of a creditors' voluntary winding up, the following has effect as regards exemption from duties chargeable under the enactments relating to stamp duties.
- (2) If the company is registered in England and Wales, the following documents are exempt from stamp duty—
  - (a) every assurance relating solely to freehold or leasehold property, or to any estate, right or interest in, any real or personal property, which forms part of the company's assets and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets, and
  - (b) every power of attorney, proxy paper, writ, order, certificate, or other instrument or writing relating solely to the property of any company which is being wound up as mentioned in subsection (1), or to any proceeding under such a winding up.

" Assurance " here includes deed, conveyance, assignment and surrender.

- (3) If the company is registered in Scotland, the following documents are exempt from stamp duty—
  - (a) every conveyance relating solely to property which forms part of the company's assets and which, after the execution of the conveyance, is or remains the company's property for the benefit of its creditors.
  - (b) every power of attorney, commission, factory, articles of roup or sale, submission and every other instrument and writing whatsoever relating solely to the company's property, and
  - (c) every deed or writing forming part of the proceedings in the winding up.

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"Conveyance" here includes assignation, instrument, discharge, writing and deed.

### **639 Company's books to be evidence**

Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

### **640 Disposal of books and papers**

- (1) When a company has been wound up and is about to be dissolved, its books and papers and those of the liquidators may be disposed of as follows—
  - (a) in the case of a winding up by or subject to the supervision of the court, in such way as the court directs;
  - (b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and
  - (c) in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, the company's creditors may direct
- (2) After 5 years from the company's dissolution no responsibility rests on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to a person claiming to be interested in it.
- (3) Provision may be made by general rules—
  - (a) for enabling the Secretary of State to prevent for such period as he thinks proper (but not exceeding 5 years from the company's dissolution), the destruction of the books and papers of a company which has been wound up, and
  - (b) for enabling any creditor or contributory of the company to make representations to the Secretary of State and to appeal to the court from any direction which may be given by the Secretary of State in the matter.
- (4) If a person acts in contravention of general rules made for the purposes of this section, or of any direction of the Secretary of State under them, he is liable to a fine.

### **641 Information as to pending liquidations**

- (1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.
- (2) If a liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

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## **642 Unclaimed assets (England and Wales)**

- (1) This section applies if, where a company is being wound up in England and Wales, it appears (either from any statement sent to the registrar under section 641 or otherwise) that a liquidator has in his hands or under his control any money—
  - (a) representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for 6 months after the date of their receipt, or
  - (b) held by the company in trust in respect of dividends or other sums due to any person as a member of the company.
- (2) The liquidator shall forthwith pay the money in question to the Insolvency Services Account at the Bank of England, and is entitled to the prescribed certificate of receipt for the money so paid, and that certificate is an effectual discharge to him in respect of it
- (3) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section 153 of the Bankruptcy Act 1914 for the purpose of ascertaining and getting in the sums, funds and dividends referred to in that section.
- (4) Any person claiming to be entitled to money paid into the Bank of England under this section may apply to the Secretary of State for payment; and the Secretary of State may, on a certificate by the liquidator that the person claiming is entitled, make an order for payment to that person of the sum due.
- (5) Any person dissatisfied with a decision of the Secretary of State in respect of a claim made under this section may appeal to the High Court.

## **643 Unclaimed dividends, etc. (Scotland)**

- (1) The following applies where a company registered in Scotland has been wound up, and is about to be dissolved.
- (2) The liquidator shall lodge in a joint stock bank of issue in Scotland (not being a bank in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts shall be transmitted to the Accountant of Court.
- (3) The provisions of section 153 of the Bankruptcy (Scotland) Act 1913 (so far as consistent with this Act) apply with any necessary modifications to sums lodged in a bank under this section as they apply to sums deposited under that section.

## **644 Resolutions passed at adjourned meetings**

Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.