



# Companies Act 1985

## 1985 CHAPTER 6

### PART XXI

#### WINDING UP OF UNREGISTERED COMPANIES

#### **665 Meaning of "unregistered company"**

For the purposes of this Part, the expression "unregistered company" includes any trustee savings bank certified under the enactments relating to such banks 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.
- (b) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts or under the legislation (past or present) relating to companies in Great Britain.
- (c) a partnership, association or company which consists of less than 8 members and is not a foreign partnership, association or company,
- (d) a limited partnership registered in England and Wales or Northern Ireland.

#### **666 Winding up of unregistered companies**

- (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act; and all the provisions of this Act about winding up apply to an unregistered company, with the exceptions and additions mentioned in the following subsections.
- (2) If an unregistered company has a principal place of business situated in Northern Ireland, it shall not be wound up under this Part unless it has a principal place of business situated in England and Wales or Scotland, or in both England and Wales and Scotland.
- (3) For the purpose of determining a court's winding-up jurisdiction, an unregistered company is deemed—

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- (a) to be registered in England and Wales or Scotland, according as its principal place of business is situated in England and Wales or Scotland, or
- (b) if it has a principal place of business situated in both countries, to be registered in both countries:

and the principal place of business situated in that part of Great Britain in which proceedings are being instituted is, for all purposes of the winding up, 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) A petition for winding up a trustee savings bank may be presented by the Trustee Savings Banks Central Board or by a commissioner appointed under section 35 of the Trustee Savings Banks Act 1981 as well as by any person authorised under Part XX to present a petition for winding up a company.
- (7) In the case of a limited partnership, the provisions of this Act about winding up 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 Secretary of State, and with the substitution of general partners for directors.
- (8) In Scotland, an unregistered company which the Court of Session has jurisdiction to wind up may be wound up by the court if there is subsisting a floating charge over property comprised in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

## **667 Inability to pay debts: unpaid creditor for £750 or more**

- (1) An unregistered company is deemed (for purposes of section 666) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750 then due and—
  - (a) the creditor 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 written demand requiring the company to pay the sum due, and
  - (b) the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

- (2) The Secretary of State may by regulations in a statutory instrument increase or reduce the money sum for the time being specified in subsection (1); but—
- (a) such regulations shall not be made unless a draft of the statutory instrument containing them has been approved by resolution of each House of Parliament, and
  - (b) no increase in the sum so specified affects any case in which the winding-up petition was presented before the coming into force of the increase.

#### **668 Inability to pay debts: debt remaining unsatisfied after action brought**

An unregistered company is deemed (for purposes of section 666) unable to pay its debts if an 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—

- (a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the company's 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 it in such manner as the court may approve or direct), and
- (b) the company has not within 10 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 sisted, or indemnified the defendant or defender to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it.

#### **669 Inability to pay debts: other cases**

An unregistered company is deemed (for purposes of section 666) unable to pay its debts—

- (a) if in England and Wales 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 of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
- (b) 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;
- (c) if in Northern Ireland a certificate of unenforceability has been granted in respect of any judgment, decree or order obtained as mentioned in paragraph (a) ;
- (d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

#### **670 Oversea company may be wound up, though 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 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.

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### **671   Contributories in winding up of unregistered company**

- (1) In the event of an unregistered company being wound up, every person is deemed 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 members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company.
- (2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned above.
- (3) In the case of an unregistered company engaged in or formed for working mines within the stannaries, a past member is not liable to contribute to the assets if he has ceased to be a member for 2 years or more either before the mine ceased to be worked or before the date of the winding up order.
- (4) In the event of the death, bankruptcy or insolvency of any 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, and to the trustees of bankrupt or insolvent contributories, respectively apply.

### **672   Power of court to stay, sist or restrain proceedings**

The provisions of this Part with respect to staying, sisting or 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 extend, in the case of an unregistered company, where the application to stay, sist or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

### **673   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.

### **674   Provisions of this Part to be cumulative**

- (1) The provisions of this Part with respect to unregistered companies are in addition to and not in restriction of any provisions in Part XX 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.
- (2) However, an unregistered company is not, except in the event of its being wound up, deemed to be a company under this Act, and then only to the extent provided by this Part.