



# Insolvency Act 1985

## 1985 CHAPTER 65

### PART II

#### COMPANY INSOLVENCY ETC

### CHAPTER VI

#### WINDING UP

*Provisions applicable to every mode of winding up*

#### **91 Power to disclaim onerous property**

- (1) Subject to the provisions of this section, the liquidator of a company that is being wound up in England and Wales may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this section, that is to say—
  - (a) any unprofitable contract; and
  - (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) A disclaimer under this section—
  - (a) shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
  - (b) shall not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.
- (4) A notice of disclaimer shall not be given under this section in respect of any property if—

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*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

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- (a) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not; and
  - (b) the period of twenty-eight days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.
- (5) The disclaimer under this section of any property of a leasehold nature shall not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—
- (a) no application under section 92 below is made with respect to that property before the end of the period of fourteen days beginning with the day on which the last notice served under this subsection was served; or
  - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (6) Where the court gives a direction under subsection (5) (b) above it may also, instead of or in addition to any order it makes under section 92 below, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.
- (7) Where, in consequence of the disclaimer under this section of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person, the Crown or that person and the successors in title of the Crown or that person shall not be subject to any personal liability in respect of any sums becoming due under that rentcharge except sums becoming due after the Crown or that person or some person claiming under or through the Crown or that person has taken possession or control of the land or has entered into occupation of it.
- (8) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.