



# Insolvency Act 1985

## 1985 CHAPTER 65

### PART II

#### COMPANY INSOLVENCY ETC

### CHAPTER VI

#### WINDING UP

*Provisions applicable to every mode of winding up*

#### **92 Powers of court in respect of disclaimed property**

- (1) This section applies where the liquidator of a company has disclaimed any property under section 91 above.
- (2) An application may be made to the court under this section by—
  - (a) any person who claims an interest in the disclaimed property; or
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (3) Subject to subsections (4) and (5) below, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
  - (a) a person entitled to it or a trustee for such a person ; or
  - (b) a person subject to such a liability as is mentioned in subsection (2)(b) above or a trustee for such a person.
- (4) The court shall not make an order by virtue of paragraph (b) of subsection (3) above except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

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*Status: This is the original version (as it was originally enacted).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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- (5) The court shall not make an order under this section vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—
- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up ; or
  - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.
- (6) For the purposes of an order under this section relating to only part of any property comprised in a lease, the requirements of subsection (5) above shall apply as if the lease comprised only the property to which the order relates.
- (7) Where subsection (5) above applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under this section on the terms required by virtue of that subsection, the court may, by order under this section, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the company) to perform the lessee's covenants in the lease; and the court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.
- (8) Where subsection (5) above applies and a person claiming under the company as underlessee or mortgagee declines to accept any order under this section, that person shall be excluded from all interest in the property.
- (9) The effect of any order under this section shall be taken into account in assessing for the purpose of section 91(8) above the extent of any loss or damage sustained by any person in consequence of the disclaimer
- (10) An order under this section vesting any property in any person shall not need to be completed by any conveyance, assignment or transfer.