



Insolvency Act 1986

1986 CHAPTER 45

The First Group of Parts Company Insolvency ; Companies Winding Up

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

CHAPTER VI

WINDING UP BY THE COURT

Investigation procedures

131 Company's statement of affairs

- (1) Where the court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) The statement shall be verified by affidavit by the persons required to submit it and shall show—
 - (a) particulars of the company's assets, debts and liabilities ;
 - (b) the names and addresses of the company's creditors ;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed or as the official receiver may require.
- (3) The persons referred to in subsection (1) are—
 - (a) those who are or have been officers of the company ;
 - (b) those who have taken part in the formation of the company at any time within one year before the relevant date;

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- (c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
 - (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.
- (4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.
- (5) The official receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above; or
 - (b) either when giving the notice mentioned in subsection (4) or subsequently, extend the period so mentioned ;
- and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) In this section—
- " employment" includes employment under a contract for services; and
 - " the relevant date " means—
 - (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
 - (b) in a case where no such appointment is made, the date of the winding-up order.
- (7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.
- (8) In the application of this section to Scotland references to the official receiver are to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

132 Investigation by official receiver

- (1) Where a winding-up order is made by the court in England and Wales, it is the duty of the official receiver to investigate—
- (a) if the company has failed, the causes of the failure; and
 - (b) generally, the promotion, formation, business, dealings and affairs of the company,
- and to make such report (if any) to the court as he thinks fit.
- (2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

133 Public examination of officers

- (1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who—
- (a) is or has been an officer of the company ; or

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- (b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or
 - (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.
- (2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) if he is requested in accordance with the rules to do so by—
- (a) one-half, in value, of the company's creditors; or
 - (b) three-quarters, in value, of the company's contributories.
- (3) On an application under subsection (1), the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to die promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.
- (4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3), namely—
- (a) the official receiver;
 - (b) the liquidator of the company;
 - (c) any person who has been appointed as special manager of the company's property or business;
 - (d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up;
 - (e) any contributory of the company.

134 Enforcement of s. 133

- (1) If a person without reasonable excuse fails at any time to attend his public examination under section 133, he is guilty of a contempt of court and liable to be punished accordingly.
- (2) In a case where a person without reasonable excuse fails at any time to attend his examination under section 133 or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that section, the court may cause a warrant to be issued to a constable or prescribed officer of the court—
- (a) for the arrest of that person; and
 - (b) for the seizure of any books, papers, records, money or goods in that person's possession.
- (3) In such a case the court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.