



# Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

## PART IV

### WINDING UP.

#### *Liquidators.*

#### **149 Appointment, remuneration, and title of liquidators.**

- (1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.
- (2) The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.
- (3) Where the proceedings are in England—
  - (a) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed :
  - (b) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such :
  - (c) When a person other than ' the official receiver ' is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.
- (4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

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- (5) In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.
- (6) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.
- (7) A vacancy in the office of a liquidator appointed by the court shall be filled by the court. In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.
- (8) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.
- (9) A liquidator shall be described as follows (that is to say):—
  - (a) in a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and
  - (b) in a winding up in Scotland or Ireland, by the style of the official liquidator, of the particular company in respect of which he is appointed, and not by his individual name.
- (10) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

#### **150 Custody of company's property.**

- (1) In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.
- (2) In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

#### **151 Powers of liquidator.**

- (1) The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court—
  - (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;
  - (b) to carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof ;
  - (c) in the case of a winding up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself ; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction ;
  - (d) in the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.

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- (2) The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court,—
- (a) To sell the real and personal property, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels :
  - (b) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal:
  - (c) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors: .
  - (d) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business :
  - (e) To raise on the security of the assets of the company any money requisite:
  - (f) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself :
  - (g) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.
- (3) The exercise by the liquidator in a winding up by the court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.
- (4) In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.
- (5) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.
- (6) In a winding up by the court in Scotland the liquidator shall, subject to rules made under this Act, have the same powers as a trustee on a bankrupt estate.

## **152 Meetings of creditors and contributories in English winding up.**

- (1) When a winding-up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—
- (a) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver ; and

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- (b) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.
- (2) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.
- (3) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

### **153 Liquidator to give information to official receiver.**

Where in the winding up of a company, by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

### **154 Payments of liquidator in English winding up into bank.**

- (1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid :

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business, of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

- (2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.
- (3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

### **155 Audit of liquidator's accounts in English winding up.**

- (1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

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- (2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.
- (3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.
- (4) When the account has been audited, one copy thereof shall be filed, and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.
- (5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

#### **156 Books to be kept by liquidator in English winding up.**

Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

#### **157 Release of liquidators in England.**

- (1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.
- (2) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
- (3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

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### **158 Exercise and control of liquidator's powers in England.**

- (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.
- (2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.
- (3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.
- (4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.
- (5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

### **159 Control of Board of Trade over liquidators in England.**

- (1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.
- (2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.
- (3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.