



# Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

## PART IV

### WINDING UP.

#### *Voluntary Winding Up.*

**182 Circumstances in which company may be wound up voluntarily.**

A company may be wound up voluntarily—

- (1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily :
- (2) If the company resolves by special resolution that the company be wound up voluntarily :
- (3) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

**183 Commencement of voluntary winding up.**

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

**184 Effect of voluntary winding up on status of company.**

When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

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**185 Notice of resolution to wind up voluntarily.**

When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the Gazette.

**186 Consequences of voluntary winding up.**

The following consequences shall ensue on the voluntary winding up of a company :—

- (i) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company :
- (ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them :
- (iii) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof :
- (iv) The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court :
- (v) The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves:
- (vi) The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories:
- (vii) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :
- (viii) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator:
- (ix) The court may, on cause shown, remove a liquidator, and appoint another liquidator.

**187 Notice by liquidator of his appointment.**

- (1) The liquidator in a voluntary winding-up shall, within twenty-one days after his appointment, file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade.
- (2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

**188 Rights of creditors in a voluntary winding up.**

- (1) Every liquidator appointed by a company in a voluntary winding-up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the Gazette and once at least in two local

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newspapers circulating in the district where the registered office or principal place of business of the company was situate.

- (2) At the meeting to be held in pursuance of the foregoing-provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an. application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.
- (3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.
- (4) No appeal shall lie from any order of the court upon an application under this section.
- (5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

#### **189 Power to fill vacancy in office of liquidator.**

- (1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

#### **190 Delegation of authority to appoint liquidators.**

- (1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.
- (2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

#### **191 Arrangement when binding on creditors.**

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under

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this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three fourths in number and value of the creditors.

- (2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

**192 Power of liquidator to accept shares, &c. as consideration for sale of property of company.**

- (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company,) the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.
- (2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.
- (3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.
- (4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.
- (5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators ; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.
- (6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding-up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and “the company” shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

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### **193 Power to apply to court.**

- (1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.
- (2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

### **194 Power of liquidator to call general meeting.**

- (1) Where a company is being wound-up voluntarily, the liquidator may. summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.
- (2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

### **195 Final meeting and dissolution.**

- (1) In the case of every voluntary winding-up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.
- (2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.
- (3) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.
- (4) The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

- (5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

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**196 Costs of voluntary liquidation.**

All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

**197 Saving for rights of creditors and contributories.**

The voluntary winding up of a company shall: not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

**198 Power of court to adopt proceedings of voluntary winding up.**

Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up.