



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART V

WINDING UP.

(II) WINDING UP BY THE COURT

Petition for Winding Up and Effects thereof.

224 Provisions as to applications for winding up.

- (1) An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that—

- (a) a contributory shall not be entitled to present a winding-up petition unless—
- (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or
 - (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and
- (b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

Status: This is the original version (as it was originally enacted).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

- (c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court; and
 - (d) in a case falling within subsection (3) of section one hundred and sixty-nine of this Act, a winding-up petition may be presented by the Board of Trade.
- (2) Where a company is being wound up voluntarily or subject to supervision in England, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.
- (3) Where, under the provisions of this Part of this Act, any person as being the husband of a female contributory is himself a contributory and a share has, during the whole or any part of the six months mentioned in paragraph (ii) of proviso (a) to subsection (1) of this section, been held by or registered in the name of the wife or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

225 Powers of court on hearing petition.

- (1) On hearing a winding-up petition the court may dismiss it. or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.
- (2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion,—
- (a) that the petitioners are entitled to relief either by winding up the company or by some other means; and
 - (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up;
- shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.
- (3) Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the court may—
- (a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and
 - (b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

226 Power to stay or restrain proceedings against company.

At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

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

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

227 Avoidance of dispositions of property, &c, after commencement of winding up.

In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

228 Avoidance of attachments, &c, in case of English company, and in case of effects in England of Scottish company.

- (1) Where any company registered in England is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.
- (2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in England, apply in the case of a company registered in Scotland as it applies in the case of a company registered in England.