



# Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

## PART V

### WINDING UP.

#### (III) VOLUNTARY WINDING UP

*Provisions applicable to a Members' Voluntary Winding Up.*

**284 Provisions applicable to a members' winding up.**

The provisions contained in the seven sections of this Act next following shall, subject to the provisions of the last of them, apply in relation to a members' voluntary winding up.

**285 Power of company to appoint and fix remuneration of liquidators.**

- (1) 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.
- (2) 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.

**286 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, 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.

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- (3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

**287 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, whether a company within the meaning of this Act or not (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 expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing 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 voluntary winding up 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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**288 Duty of liquidator to call creditors' meeting in case of insolvency.**

- (1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section two hundred and eighty-three of this Act he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.
- (2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty pounds.

**289 Duty of liquidator to call general meeting at end of each year.**

- (1) Subject to the provisions of section two hundred and ninety-one of this Act, 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 at the first convenient date within three months from the end of the year or such longer period as the Board of Trade may allow, 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.
- (2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

**290 Final meeting and dissolution.**

- (1) Subject to the provisions of the next following section, 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 send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

- (4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, 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.

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- (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 deliver to the registrar an office copy of the order for registration, 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.
- (6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding fifty pounds.

**291 Alternative provisions as to annual and final meetings in case of insolvency.**

Where section two hundred and eighty-eight of this Act has effect, sections two hundred and ninety-nine and three hundred thereof shall apply to the winding up to the exclusion of the two last foregoing sections, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under the said section two hundred and ninety-nine at the end of the first year from the commencement of the winding up, unless the meeting held under the said section two hundred and eighty-eight is held more than three months before the end of that year.