



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART V

WINDING UP.

(III) VOLUNTARY WINDING UP

Provisions applicable to every Voluntary Winding Up.

301 Provisions applicable to every voluntary winding up.

The provisions contained in the nine sections of this Act next following shall apply to every voluntary winding up whether a members' or a creditors' winding up.

302 Distribution of property of company.

Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

303 Powers and duties of liquidator in voluntary winding up.

(1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs (d), (e) and (f) of sub section (i) of section two hundred and forty-five of this Act to a liquidator in a winding up by the court;

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- (b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court;
 - (c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;
 - (d) exercise the power of the court of making calls;
 - (e) 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 purpose he may think fit.
- (2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.
- (3) When several liquidators are appointed, any power given by this Act 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.

304 Power of court to appoint and remove liquidator in voluntary winding up.

- (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

305 Notice by liquidator of his appointment.

- (1) The liquidator shall, within fourteen days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by statutory instrument made 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.

306 Arrangement when binding on creditors.

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

307 Power to apply to court to have questions determined or powers exercised.

- (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, 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

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on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

- (3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute of the order in his books relating to the company.

308 Power of court in Scotland to stay proceedings against company.

- (1) If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.
- (2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the first day of November, nineteen hundred and twenty-nine, with respect to the staying of proceedings against a company registered in England and in course of being wound up.

309 Costs of voluntary winding up.

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

310 Saving for rights of creditors and contributories.

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