



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART V

WINDING UP.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and Ranking of Claims.

316 Debts of all descriptions may be proved.

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or- claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

317 Application of bankruptcy rules in winding up of insolvent English companies.

In the winding up of an insolvent company registered in England the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

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318 Ranking of claims in Scotland.

In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act, 1913, that is to say,—

- (a) the provisions of sections forty-five to sixty-two regarding voting and ranking for payment of dividends;
- (b) sections ninety-six and one hundred and five, which respectively relate to the reckoning of majorities and to the interruption of prescription;

shall so far as is consistent with this Act apply in like manner as they apply in the sequestration of a bankrupt's estate, with the substitution of references to winding up for references to sequestration, of references to the court for references to the sheriff, of references to the liquidator for references to the trustee, and of references to the company for references to the bankrupt, and with any other necessary modifications.

319 Preferential payments.

(1) In a winding up there shall be paid in priority to all other debts—

- (a) the following rates and taxes,—
 - (i) all local rates due from the company at the relevant date, and having become due and payable within twelve months next before that date;
 - (ii) all land tax, income tax, profits tax, excess profits tax or other assessed taxes assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;
 - (iii) the amount of any purchase tax due from the company at the relevant date, and having become due within twelve months next before that date;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered;
- (c) any sum ordered under the Reinstatement in Civil Employment Act, 1944, to be paid by way of compensation where the default by reason of which the order for compensation was made occurred before the relevant date, whether or not the order was made before that date;
- (d) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution;
- (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due in respect of contributions payable during, the twelve months next before the relevant date by the company as the employer of any persons under the Unemployment Insurance Act, 1935, the National Health Insurance Act, 1936, the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, the National Insurance (Industrial Injuries) Act, 1946, or the National Insurance Act, 1946;
- (f) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section seven of the Workmen's

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Compensation Act, 1925, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act, being amounts which have accrued before the relevant date in satisfaction of a right which arises or has arisen in respect of employment before the fifth day of July, nineteen hundred and forty-eight (that is to say; the day appointed for the purposes of the National Insurance (Industrial Injuries) Act 1946);

- (g) the amount of any debt which, by virtue of subsection (5) of section three of the Workmen's Compensation (Coal Mines) Act, 1934, is due from the company to an insurer in respect of a liability in respect of the satisfaction of a right falling within the last foregoing paragraph.
- (2) Notwithstanding anything in paragraphs (b) and (c) of the foregoing subsection, the sum to which priority is to be given under those paragraphs respectively shall not, in the case of any one claimant, exceed two hundred pounds:

Provided that where a claimant Under the said paragraph (b) is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

- (3) Where any compensation under the Workmen's Compensation Act, 1925, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (f) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.
- (4) Where any payment has been made—
- (a) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary; or
 - (b) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration;
- out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.
- (5) The foregoing debts shall—
- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
 - (b) in the case of a company registered in England, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.
- (6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given

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by paragraph (e) of subsection (1) of this section formal proof thereof shall not be required except in so far as is otherwise provided by general rules.

- (7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

- (8) For the purposes of this section—
- (a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;
 - (b) the expression “accrued holiday remuneration ” includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday;
 - (c) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the National Insurance Act, 1946, or any enactment repealed by that Act as remuneration in respect of that period; and
 - (d) the expression “the relevant date ” means—
 - (i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
 - (ii) in any case where the foregoing sub-paragraph does not apply, means the date of the passing of the resolution for the winding up of the company.
- (9) This section shall not apply in the case of a winding up where the relevant date as defined in subsection (7) of section two hundred and sixty-four of the Companies Act, 1929, as originally enacted, occurred before the commencement of this Act, and in such a case the provisions relating to preferential payments which would have applied if this Act had not passed shall be deemed to remain in full force.