



Insolvency Act 1986

1986 CHAPTER 45

The First Group of Parts Company Insolvency ; Companies Winding Up

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

CHAPTER VI

WINDING UP BY THE COURT

Grounds and effect of winding-up petition

122 Circumstances in which company may be wound up by the court

- (1) A company may be wound up by the court if—
- (a) the company has by special resolution resolved that the company be wound up by the court,
 - (b) being a public company which was registered as such on its original incorporation, the company has not been issued with a certificate under section 117 of the Companies Act (public company share capital requirements) and more than a year has expired since it was so registered,
 - (c) it is an old public company, within the meaning of the Consequential Provisions Act,
 - (d) the company does not commence its business within a year from its incorporation or suspends its business for a whole year,
 - (e) the number of members is reduced below 2,
 - (f) the company is unable to pay its debts,
 - (g) the court is of the opinion that it is just and equitable that the company should be wound up.
- (2) In Scotland, a company which the Court of Session has jurisdiction to wind up may be wound up by the Court if there is subsisting a floating charge over property comprised

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in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the Court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

123 Definition of inability to pay debts

- (1) A company is deemed unable to pay its debts—
 - (a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
 - (b) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
 - (c) if, in Scotland, the *induciae* of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
 - (d) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company, or
 - (e) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.
- (2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.
- (3) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by order under section 416 in Part XV.

124 Application for winding up

- (1) Subject to the provisions of this section, an application to the court for the winding up of a company shall be by petition presented either by the company, or the directors, 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.
- (2) Except as mentioned below, a contributory is not entitled to present a winding-up petition unless either—
 - (a) the number of members is reduced below 2, or
 - (b) 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 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.
- (3) A person who is liable under section 76 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in section 122(1)

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(f) and (g), and subsection (2) above does not then apply; but unless the person is a contributory otherwise than under section 76, he may not in his character as contributory petition on any other ground.

This subsection is deemed included in Chapter VII of Part V of the Companies Act (redeemable shares; purchase by a company of its own shares) for the purposes of the Secretary of State's power to make regulations under section 179 of that Act.

- (4) A winding-up petition may be presented by the Secretary of State
 - (a) if the ground of the petition is that in section 122(1)(b) or (c), or
 - (b) in a case falling within section 440 of the Companies Act (expedient in the public interest, following report of inspectors, etc.).
- (5) Where a company is being wound up voluntarily in England and Wales, 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 cannot be continued with due regard to the interests of the creditors or contributories.

125 Powers of court on hearing of petition

- (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an 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 company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (2) If 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; but this does not apply if the court 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.

126 Power to stay or restrain proceedings against company

- (1) 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—
 - (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England and Wales 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;

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

- (2) In the case of a company registered under section 680 of the Companies Act (pre-1862 companies; companies formed under legislation other than the Companies Acts) or the previous corresponding legislation, where the application to stay, sist or restrain is by a creditor, this section extends to actions and proceedings against any contributory of the company.

127 Avoidance of property dispositions, etc.

In a winding up by the court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void.

128 Avoidance of attachments, etc.

- (1) Where a company registered in England and Wales 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 is void.
- (2) This section, so far as relates to any estate or effects of the company situated in England and Wales, applies in the case of a company registered in Scotland as it applies in the case of a company registered in England and Wales.