



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

#### WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

### CHAPTER III

#### MEMBERS' VOLUNTARY WINDING UP

#### **91 Appointment of liquidator.**

- (1) In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.
- (2) On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

#### **Modifications etc. (not altering text)**

- C1** S. 91(1)(2) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\), Sch. 3](#)  
Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4, Sch. 2](#)

#### **92 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.

*Status: Point in time view as at 06/04/2017.*

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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.

**Modifications etc. (not altering text)**

- C2** Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4, Sch. 2](#)  
 S. 92(1)(2)(3)(4) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\), Sch. 3](#)

**[<sup>F1</sup>92A Progress report to company <sup>F2</sup>... [<sup>F3</sup>(England and Wales)]**

- (1) Subject to [<sup>F4</sup>section 96], [<sup>F5</sup>[<sup>F6</sup>where the company is registered in England and Wales]] the liquidator must—
- (a) for each prescribed period produce a progress report relating to the prescribed matters; and
  - (b) within such period commencing with the end of the period referred to in paragraph (a) as may be prescribed send a copy of the progress report to—
    - (i) the members of the company; and
    - (ii) such other persons as may be prescribed.
- (2) A liquidator who fails to comply with this section is liable to a fine.]

**Textual Amendments**

- F1** S. 92A added (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\), art. 6\(1\)](#) (with art. 12(1))
- F2** Words in s. 92A heading omitted (26.5.2015) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 136\(2\)\(b\), 164\(3\)\(i\)\(v\)](#)
- F3** Words in s. 92A title repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\), art. 5\(1\)\(b\)](#) (with arts. 14, 15)
- F4** Words in s. 92A(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 16; S.I. 2015/1329, reg. 3\(d\); S.I. 2016/1020, reg. 4\(e\)](#) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)
- F5** Words in s. 92A(1) repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\), art. 5\(1\)\(a\)](#) (with arts. 14, 15)
- F6** Words in s. 92A(1) substituted (26.5.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 136\(2\)\(a\), 164\(3\)\(i\)\(v\)](#)

**93 General company meeting at each year's end [<sup>F7</sup>(Scotland)]**

- [<sup>F8</sup>(1) Subject to [<sup>F9</sup>section 96], in the event of the winding up [<sup>F10</sup>of a company registered in Scotland] 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 3 months from the end of the year or such longer period as the Secretary of State may allow.

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- (2) The liquidator shall lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.
- (3) If the liquidator fails to comply with this section, he is liable to a fine.]

#### Textual Amendments

- F7** Word in s. 93 heading inserted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 6\(2\)\(a\)](#) (with art. 12(2))
- F8** S. 93 repealed (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\)](#), arts. 1(2)-(4), [5\(2\)](#) (with arts. 14, 15) (with savings by S.S.I. 2016/141, art. 16 (as inserted (S.) (1.8.2017) by [The Public Services Reform \(Corporate Insolvency and Bankruptcy\) \(Scotland\) Order 2017 \(S.S.I. 2017/209\)](#), arts. 1(2), [8\(3\)](#)) (see S.I. 2019/816, reg. 4(a))
- F9** Words in s. 93(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 9 para. 17](#); S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)
- F10** Words in s. 93(1) inserted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 6\(2\)\(b\)](#) (with art. 12(2))

#### Modifications etc. (not altering text)

- C3** Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4, [Sch. 2](#)
- C4** S. 93(1) modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(2), [Sch. 3](#)

### [<sup>F11</sup>94 Final account prior to dissolution

- (1) As soon as the company's affairs are fully wound up the liquidator must make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of.
- (2) The liquidator must send a copy of the account to the members of the company before the end of the period of 14 days beginning with the day on which the account is made up.
- (3) The liquidator must send a copy of the account to the registrar of companies before the end of that period (but not before sending it to the members of the company).
- (4) If the liquidator does not comply with subsection (2) the liquidator is liable to a fine.
- (5) If the liquidator does not comply with subsection (3) the liquidator is liable to a fine and, for continued contravention, a daily default fine.]

#### Textual Amendments

- F11** S. 94 substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 9 para. 18](#); S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

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**Modifications etc. (not altering text)**

**C5** S. 94(3) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(1)-(3)** (with s. 126(3)-(11)); S.I. 1998/3178, **arts. 2, 3** (as amended (28.6.2016) by **The Building Societies (Floating Charges and Other Provisions) Order 2016** (S.I. 2016/679), arts. 1(1), 6)

**95 Effect of company’s insolvency.**

(1) This section applies where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors’ declaration under section 89.

<sup>F12</sup>(1A) The liquidator must before the end of the period of 7 days beginning with the day after the day on which the liquidator formed that opinion—

- (a) make out a statement in the prescribed form as to the affairs of the company, and
- (b) send it to the company's creditors.]

<sup>F13</sup>(2) .....

<sup>F13</sup>(2A) .....

<sup>F13</sup>(3) .....

(4) The statement as to the affairs of the company <sup>F14</sup> . . . shall show—

- (a) particulars of the company’s assets, debts and liabilities;
- (b) the names and addresses of the company’s creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

<sup>F15</sup>(4A) The statement as to the affairs of the company shall be [<sup>F16</sup>verified by the liquidator]—

- (a) in the case of a winding up of a company registered in England and Wales [<sup>F17</sup>be verified by the liquidator], by a statement of truth; and
- (b) in the case of a winding up of a company registered in Scotland, [<sup>F18</sup>contain a statutory declaration by the liquidator].]

<sup>F19</sup>(4B) The company's creditors may in accordance with the rules nominate a person to be liquidator.

(4C) The liquidator must in accordance with the rules seek such a nomination from the company's creditors.]

<sup>F20</sup>(5) .....

<sup>F20</sup>(6) .....

<sup>F20</sup>(7) .....

(8) If the liquidator without reasonable excuse fails to comply with [<sup>F21</sup>subsections (1) to (4A)], he is liable to a fine.

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### Textual Amendments

- F12** S. 95(1A) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 19\(2\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))
- F13** S. 95(2)-(3) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 19\(3\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))
- F14** Words in s. 95(4) omitted (6.4.2010) by virtue of [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\), art. 5\(2\)\(a\)](#)
- F15** S. 95(4A) inserted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\), art. 5\(2\)\(b\)](#)
- F16** Words in s. 95(4A) repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\), art. 8\(a\)](#) (with arts. 14, 15)
- F17** Words in s. 95(4A)(a) inserted (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\), art. 8\(b\)](#) (with arts. 14, 15)
- F18** Words in s. 95(4A)(b) substituted (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\), art. 8\(c\)](#) (with arts. 14, 15)
- F19** S. 95(4B)(4C) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 19\(4\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))
- F20** S. 95(5)-(7) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 19\(3\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))
- F21** Words in s. 95(8) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 19\(5\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))

### Modifications etc. (not altering text)

- C6** S. 95 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
S. 95 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

## [<sup>F22</sup>96 Conversion to creditors' voluntary winding up.

- (1) The winding up becomes a creditors' voluntary winding up as from the day on which—
  - (a) the company's creditors under section 95 nominate a person to be liquidator, or
  - (b) the procedure by which the company's creditors were to have made such a nomination concludes without a nomination having been made.
- (2) As from that day this Act has effect as if the directors' declaration under section 89 had not been made.
- (3) The liquidator in the creditors' voluntary winding up is to be the person nominated by the company's creditors under section 95 or, where no person has been so nominated, the existing liquidator.

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- (4) In the case of the creditors nominating a person other than the existing liquidator any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—
- (a) directing that the existing liquidator is to be liquidator instead of or jointly with the person nominated by the creditors, or
  - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

[ The court shall grant an application under subsection (4) made by the holder of a <sup>F23</sup>(4A) qualifying floating charge in respect of the company's property (within the meaning of paragraph 14 of Schedule B1) unless the court thinks it right to refuse the application because of the particular circumstances of the case.]

- (5) The “existing liquidator” is the person who is liquidator immediately before the winding up becomes a creditors' voluntary winding up.]

#### Textual Amendments

- F22** S. 96 substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\)](#), [Sch. 9 para. 20\(1\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))
- F23** S. 96(4A) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\)](#), [Sch. 9 para. 20\(2\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))

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