



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIV

#### INSOLVENCY

##### *Winding up by the court*

#### **367 Winding-up petitions.**

- (1) The Authority may present a petition to the court for the winding up of a body which—
  - (a) is, or has been, an authorised person;
  - (b) is, or has been, an appointed representative; or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) In subsection (1) “body” includes any partnership.
- (3) On such a petition, the court may wind up the body if—
  - (a) the body is unable to pay its debts within the meaning of section 123 or 221 of the 1986 Act (or Article 103 or 185 of the 1989 Order); or
  - (b) the court is of the opinion that it is just and equitable that it should be wound up.
- (4) If a body is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of subsection (3)(a) as unable to pay its debts.
- (5) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the body concerned.
- (6) Subsection (7) applies if a petition is presented under subsection (1) for the winding up of a partnership—
  - (a) on the ground mentioned in subsection (3)(b); or
  - (b) in Scotland, on a ground mentioned in subsection (3)(a) or (b).

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- (7) The court has jurisdiction, and the 1986 Act (or the 1989 Order) has effect, as if the partnership were an unregistered company as defined by section 220 of that Act (or Article 184 of that Order).

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

- C1** S. 367 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, regs. 1, 6](#)  
S. 367 amended (1.12.2001) by [S.I. 2001/2657, arts. 1\(1\), 12](#) (which was revoked (8.10.2001) by [S.I. 2001/3083, arts. 1\(2\), 23](#)); [S.I. 2001/3538, art. 2\(1\)](#)  
S. 367 amended (1.12.2001) by [S.I. 2001/3083, arts. 1\(2\), 12](#); [S.I. 2001/3538, art. 2\(1\)](#)
- C2** S. 367 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\), reg. 6](#)
- C3** S. 367 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\), regs. 1\(2\)\(c\), 95, Sch. 5 para. 6](#) (with [reg. 3](#)) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para 155\(6\)\(f\)](#) (with [Sch. 2 para. 156](#)))
- C4** S. 367 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\), regs. 1\(2\)\(b\), 62, Sch. 3 para. 7](#) (with [reg. 3](#)) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 196\(5\)\(g\)](#))
- C5** S. 367(3)(a) modified (1.12.2001) by [S.I. 2001/3650, arts. 1\(a\), 15](#)
- C6** S. 367(5) modified (1.12.2001) by [S.I. 2001/3650, arts. 1\(a\), 14](#)

**368 Winding-up petitions: EEA and Treaty firms.**

The Authority may not present a petition to the court under section 367 for the winding up of—

- (a) an EEA firm which qualifies for authorisation under Schedule 3, or
- (b) a Treaty firm which qualifies for authorisation under Schedule 4,

unless it has been asked to do so by the home state regulator of the firm concerned.

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

- C7** S. 368 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\), regs. 1\(2\)\(c\), 95, Sch. 5 para. 6](#) (with [reg. 3](#)) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 155\(6\)\(f\)](#) (with [Sch. 2 para. 156](#)))
- C8** S. 368 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\), regs. 1\(2\)\(b\), 62, Sch. 3 para. 7](#) (with [reg. 3](#)) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 196\(5\)\(g\)](#))

**369 Insurers: service of petition etc. on Authority.**

- (1) If a person other than the Authority presents a petition for the winding up of an authorised person with permission to effect or carry out contracts of insurance, the petitioner must serve a copy of the petition on the Authority.
- (2) If a person other than the Authority applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of

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an authorised person with permission to effect or carry out contracts of insurance, the applicant must serve a copy of the application on the Authority.

VALID FROM 12/03/2009

**[<sup>F1</sup>]** **Reclaim funds: service of petition etc on Authority**

**[<sup>F1</sup>]**  
**F1 369A**

- (1) If a person other than the Authority presents a petition for the winding up of an authorised reclaim fund, the petitioner must serve a copy of the petition on the Authority.
- (2) If a person other than the Authority applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund, the applicant must serve a copy of the application on the Authority.
- (3) In this section “authorised reclaim fund” means a reclaim fund within the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008 that is authorised for the purposes of this Act.]]

**Textual Amendments**

- F1** S. 369A inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1), [Sch. 2 para. 7](#); [S.I. 2009/490](#), [art. 2](#) (with [art. 3](#))

**370 Liquidator’s duty to report to Authority.**

If—

- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by a person other than the Authority, and
- (b) it appears to the liquidator that the company or body is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the liquidator must report the matter to the Authority without delay.

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

- C9** S. 370 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [regs. 1, 6](#)
- C10** S. 370 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)
- C11** S. 370 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), [art. 5\(1\)\(6\)](#)

**371 Authority’s powers to participate in proceedings.**

- (1) This section applies if a person other than the Authority presents a petition for the winding up of a body which—
  - (a) is, or has been, an authorised person;
  - (b) is, or has been, an appointed representative; or

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- (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) The Authority is entitled to be heard—
- (a) at the hearing of the petition; and
  - (b) at any other hearing of the court in relation to the body under or by virtue of Part IV or V of the 1986 Act (or Part V or VI of the 1989 Order).
- (3) Any notice or other document required to be sent to a creditor of the body must also be sent to the Authority.
- (4) A person appointed for the purpose by the Authority is entitled—
- (a) to attend any meeting of creditors of the body;
  - (b) to attend any meeting of a committee established for the purposes of Part IV or V of the 1986 Act under section 101 of that Act or under section 141 or 142 of that Act;
  - (c) to attend any meeting of a committee established for the purposes of Part V or VI of the 1989 Order under Article 87 of that Order or under Article 120 of that Order; and
  - (d) to make representations as to any matter for decision at such a meeting.
- (5) If, during the course of the winding up of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the <sup>M1</sup>Companies Act 1985 (or Article 418 of the <sup>M2</sup>Companies (Northern Ireland) Order 1986).

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

**C12** S. 371 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [regs. 1, 6](#)

**C13** S. 371 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)

**Marginal Citations**

**M1** 1985 c. 6.

**M2** [S.I. 1986/1032 \(N.I. 6\)](#).

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