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STATUTORY INSTRUMENTS

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**1989 No. 2405**

**The Insolvency (Northern Ireland) Order 1989**

PARTS II TO VI COMPANY INSOLVENCY; COMPANIES WINDING UP

PART V

WINDING UP OF COMPANIES REGISTERED  
UNDER THE COMPANIES ORDERS

CHAPTER I

PRELIMINARY

*Modes of winding up*

**Alternative modes of winding up**

**60.**—(1) The winding up of a company, within the meaning given by Article 3 of the Companies Order, may be either voluntary (Chapters II, III, IV and V) or by the High Court (Chapter VI).

(2) This Chapter, and Chapters VII to X, relate to winding up generally, except where otherwise stated.

*Contributories*

**Liability as contributories of present and past members**

**61.**—(1) When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) This is subject as follows—

- (a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member is not liable to contribute, unless it appears to the High Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Companies Order and this Order;
- (d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;
- (e) nothing in the Companies Order or this Order invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the

policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

- (f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him.

### **Directors with unlimited liability**

**62.**—(1) In the winding up of a limited company, any director (whether past or present) whose liability is under the Companies Order unlimited is liable, in addition to his liability (if any) to contribute as an ordinary member, to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company.

(2) However—

- (a) a past director is not liable to make such further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;
- (b) a past director is not liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) subject to the company's articles, a director is not liable to make such further contribution unless the High Court deems it necessary to require that contribution in order to satisfy the company's debts and liabilities, and the expenses of the winding up.

### **Liability of past directors and shareholders**

**63.**—(1) This Article applies where a company is being wound up and—

- (a) it has under Chapter VII of Part VI of the Companies Order (redeemable shares; purchase by a company of its own shares) made a payment out of capital in respect of the redemption or purchase of any of its own shares (the payment being referred to in this Article as "the relevant payment"), and
- (b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this Article) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.

(2) If the winding up commenced within one year from the date on which the relevant payment was made, then—

- (a) the person from whom the shares were redeemed or purchased, and
- (b) the directors who signed the statutory declaration made in accordance with Article 183(3) of the Companies Order for the purposes of the redemption or purchase (except a director who shows that he had reasonable grounds for forming the opinion set out in the declaration),

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.

(3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.

(4) A person who has contributed any amount to the assets in pursuance of this Article may apply to the High Court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the Court thinks just and equitable.

(5) Articles 61 and 62 do not apply in relation to liability accruing by virtue of this Article.

(6) This Article is deemed included in Chapter VII of Part VI of the Companies Order for the purposes of the Department's power to make regulations under Article 189 of that Order.

### **Limited company formerly unlimited**

**64.**—(1) This Article applies in the case of a company being wound up which was at some former time registered as unlimited but has re-registered—

- (a) as a public company under Article 53 of the Companies Order (or the former corresponding provision, Article 7 of the Companies (Northern Ireland) Order 1981(1)), or
- (b) as a limited company under Article 61 of the Companies Order (or the former corresponding provision, Article 119 of the Companies (Northern Ireland) Order 1978(2)).

(2) Notwithstanding Article 61(2)(a), a past member of the company who was a member of it at the time of re-registration, if the winding up commences within 3 years from the day on which the company was re-registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) Subject to Article 61(2)(a) and to paragraph (2), but notwithstanding Article 61(2)(c), if no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as mentioned in paragraph (2) notwithstanding that the existing members have satisfied the contributions required to be made by them under the Companies Order and this Order.

(4) Notwithstanding Article 61(2)(d) and (3), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as mentioned in paragraph (2).

### **Unlimited company formerly limited**

**65.**—(1) This Article applies in the case of a company being wound up which was at some former time registered as limited but has been re-registered as unlimited under Article 59 of the Companies Order (or the former corresponding provision, Article 118 of the Companies (Northern Ireland) Order 1978(3)).

(2) A person who, at the time when the application for the company to be re-registered was lodged, was a past member of the company and did not after that again become a member of it is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been re-registered.

### **Nature of contributory's liability**

**66.** The liability of a contributory creates a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

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(1) 1981 NI 19  
(2) 1978 NI 12  
(3) 1978 NI 12

### **Contributories in case of death of a member**

**67.**—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives are liable in a due course of administration to contribute to the assets of the company in discharge of his liability and are contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

### **Effect of contributory's bankruptcy**

**68.**—(1) This Article applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.

(2) His trustee in bankruptcy represents him for all purposes of the winding up, and is a contributory accordingly.

(3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets.

(4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

### **Companies registered under Companies Order, Part XXII, Chapter II**

**69.**—(1) This Article applies in the event of a company being wound up which has been registered under Article 629 of the Companies Order (or previous corresponding provisions in the Companies Act (Northern Ireland) 1960<sup>(4)</sup> or earlier Acts).

(2) Every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable—

- (a) to pay, or contribute to the payment of, any debt or liability so contracted, or
- (b) to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or
- (c) to pay, or contribute to the amount of, the expenses of winding up the company, so far as relates to such debts or liabilities.

(3) Every contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as is mentioned in paragraph (2).

(4) In the event of the death, bankruptcy or insolvency of any contributory, provisions of this Order, with respect to the personal representatives of deceased contributories and to the trustees of bankrupt or insolvent contributories respectively, apply.

## **CHAPTER II**

### **VOLUNTARY WINDING UP (INTRODUCTORY AND GENERAL)**

#### *Resolutions for, and commencement of, voluntary winding up*

### **Circumstances in which company may be wound up voluntarily**

**70.**—(1) A company may be wound up voluntarily—

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(4) 1960 c. 22 (N.I.)

- (a) when the period (if any) fixed for the duration of the company by its articles expires, or the event (if any) occurs, on the occurrence of which its articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it to be wound up voluntarily;
  - (b) if the company resolves by special resolution that it be wound up voluntarily;
  - (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.
- (2) A resolution passed under sub-paragraph (a) of paragraph (1), as well as a special resolution under sub-paragraph (b) and an extraordinary resolution under sub-paragraph (c), is subject to Article 388 of the Companies Order (copy of resolution to be forwarded to registrar within 15 days).

#### **Notice of resolution to wind up voluntarily**

**71.**—(1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days from the passing of the resolution, give notice of the resolution by advertisement in the Belfast Gazette.

(2) If default is made in complying with this Article, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(3) For the purposes of paragraph (2) the liquidator is deemed an officer of the company.

#### **Commencement of voluntary winding up**

**72.** A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

#### *Consequences of resolution to wind up*

#### **Effect on business and status of company**

**73.**—(1) In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2) However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

#### **Avoidance of share transfers, etc., after winding-up resolution**

**74.** Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the company's members, made after the commencement of a voluntary winding up is void.

#### *Declaration of solvency*

#### **Statutory declaration of solvency**

**75.**—(1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than 2 directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in Article 5(1)), within such period,

not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

- (2) Such a declaration by the directors has no effect for the purposes of this Order unless—
- (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
  - (b) it embodies a statement of the company’s assets and liabilities as at the latest practicable date before the making of the declaration.

(3) The declaration shall be delivered to the registrar before the expiration of 15 days from the date on which the resolution for winding up is passed.

(4) A director making a declaration under this Article without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified shall be guilty of an offence.

(5) If the company is wound up in pursuance of a resolution passed within 5 weeks from the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

(6) If a declaration required by paragraph (3) to be delivered to the registrar is not so delivered within the time specified by that paragraph, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

### **Distinction between “members” and “creditors” voluntary winding up**

76. A winding up in the case of which a directors' statutory declaration in accordance with Article 75 has been made is a “members' voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors' voluntary winding up”.

## **CHAPTER III**

### **MEMBERS' VOLUNTARY WINDING UP**

#### **Appointment of liquidator**

77.—(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.

#### **Power to fill vacancy in office of liquidator**

78.—(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.

(3) The meeting shall be held in the manner provided by this Order or by the company’s articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the High Court.

### **General company meeting at each year's end**

**79.**—(1) Subject to Articles 82 and 88, in the event of the winding up 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 Department may allow.

(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 contravenes this Article, he shall be guilty of an offence.

### **Final meeting prior to dissolution**

**80.**—(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving an explanation of it.

(2) The meeting shall be called by advertisement in the Belfast Gazette, specifying its time, place and object and published at least one month before the meeting.

(3) Within one week from the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date.

(4) If the copy is not sent or the return is not made in accordance with paragraph (3), the liquidator shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(5) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned in paragraph (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of paragraph (3) as to the making of the return are deemed complied with.

(6) If the liquidator fails to call a general meeting of the company as required by paragraph (1), he shall be guilty of an offence.

### **Effect of company's insolvency**

**81.**—(1) This Article 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 Article 75.

(2) The liquidator shall—

(a) summon a meeting of creditors not later than 28 days from the day on which he formed that opinion;

(b) not less than 7 days before the day on which the creditors' meeting is to be held—

(i) send notices of that meeting to the creditors by post; and

(ii) cause notice of that meeting to be advertised once in the Belfast Gazette and once at least in 2 newspapers circulating in each district in which the company's principal place of business in the United Kingdom was situated during the relevant period; and

(c) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by sub-paragraph (c).

(3) The liquidator shall also—

(a) make out a statement in the prescribed form as to the affairs of the company;

- (b) lay that statement before the creditors' meeting; and
  - (c) attend and preside at that meeting.
- (4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator and 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.
- (5) Where the company had no place of business in the United Kingdom during the relevant period, the reference in paragraph (2)(b)(ii) to the company's principal place of business in the United Kingdom is replaced by a reference to its registered office.
- (6) In this Article "the relevant period" means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.
- (7) If the liquidator without reasonable excuse contravenes this Article, he shall be guilty of an offence.

#### **Conversion to creditors' voluntary winding up**

- 82.** As from the day on which the creditors' meeting is held under Article 81, this Order has effect as if—
- (a) the directors' declaration under Article 75 had not been made; and
  - (b) the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in Article 84;
- and accordingly the winding up becomes a creditors' voluntary winding up.

### CHAPTER IV

#### CREDITORS' VOLUNTARY WINDING UP

##### **Application of this Chapter**

- 83.**—(1) Subject to paragraph (2), this Chapter applies in relation to a creditors' voluntary winding up.
- (2) Articles 84 and 85 do not apply where, under Article 82, a members' voluntary winding up has become a creditors' voluntary winding up.

##### **Meeting of creditors**

- 84.**—(1) The company shall—
- (a) cause a meeting of its creditors to be summoned not later than 14 days from the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;
  - (b) not less than 7 days before the day on which the creditors' meeting is to be held—
    - (i) cause the notices of that meeting to be sent by post; and



(ii) cause notice of that meeting to be advertised once in the Belfast Gazette and once at least in 2 newspapers circulating in each district in which the company's principal place of business in the United Kingdom was situated during the relevant period.

(2) The notice of the creditors' meeting shall state either—

(a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require; or

(b) a place in each district mentioned in paragraph (1)(b)(ii) where, on the 2 business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.

(3) Where the company had no place of business in the United Kingdom during the relevant period, the reference in paragraph (1)(b)(ii) to the company's principal place of business in the United Kingdom is replaced by a reference to its registered office.

(4) In this Article "the relevant period" means the period of 6 months immediately preceding the day on which were sent thenotices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(5) If the company without reasonable excuse contravenes paragraph (1) or (2), it shall be guilty of an offence.

#### **Directors to lay statement of affairs before creditors**

**85.**—(1) The directors of the company shall—

(a) make out a statement in the prescribed form as to the affairs of the company;

(b) cause that statement to be laid before the creditors' meeting under Article 84; and

(c) appoint one of their number to preside at that meeting;

and it is the duty of the director so appointed to attend the meeting and preside over it.

(2) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors and 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.

(3) If—

(a) the directors without reasonable excuse contravene paragraph (1) or (2); or

(b) any director without reasonable excuse contravenes paragraph (1), so far as requiring him to attend and preside at the creditors' meeting,

the directors or (as the case may be) the director shall be guilty of an offence.

#### **Appointment of liquidator**

**86.**—(1) The creditors and the company at their respective meetings mentioned in Article 84 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.

(2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company.

(3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days from the date on which the nomination was made by the creditors, apply to the High Court for an order either—

- (a) directing that the person nominated as liquidator by the company shall 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.

### **Appointment of liquidation committee**

**87.**—(1) The creditors at the meeting to be held under Article 84 or at any subsequent meeting may, if they think fit, appoint a committee (“the liquidation committee”) of not more than 5 persons to exercise the functions conferred on it by or under this Order.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.

(3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so resolve—

- (a) the persons mentioned in the resolution are not then, unless the High Court otherwise directs, qualified to act as members of the committee; and
- (b) on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

### **Creditors' meeting where winding up converted under Article 82**

**88.** Where, in the case of a winding up which was, under Article 82, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with Article 81, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with Article 84.

### **Cesser of directors' powers**

**89.** On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

### **Vacancy in office of liquidator**

**90.** If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the High Court), the creditors may fill the vacancy.

### **Meetings of company and creditors at each year's end**

**91.**—(1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors 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 Department may allow.

(2) The liquidator shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) If the liquidator contravenes this Article, he shall be guilty of an offence.

(4) Where under Article 82 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under Article 81 is held 3 months or less before the end of the first year from the commencement of the winding up, the liquidator is not required by this Article to summon a meeting of creditors at the end of that year.

### **Final meeting prior to dissolution**

**92.**—(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by advertisement in the Belfast Gazette specifying the time, place and object of the meeting, and published at least one month before it.

(3) Within one week from the date of the meetings (or, if they are not held on the same date, from the date of the later one) the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.

(4) If the copy is not sent or the return is not made in accordance with paragraph (3), the liquidator shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by paragraph (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that paragraph as to the making of the return are, in respect of that meeting, deemed complied with.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this Article, he shall be guilty of an offence.

## **CHAPTER V**

### **PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP**

#### **Distribution of company's property**

**93.** Subject to the provisions of this Order as to preferential payments, the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the company's articles otherwise provide) be distributed among the members according to their rights and interests in the company.

#### **Appointment or removal of liquidator by the High Court**

**94.**—(1) If from any cause whatever there is no liquidator acting, the High Court may appoint a liquidator.

(2) The High Court may, on cause shown, remove a liquidator and appoint another.

#### **Notice by liquidator of his appointment**

**95.**—(1) The liquidator shall, within 14 days from his appointment, publish in the Belfast Gazette and deliver to the registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

### **Acceptance of shares, etc., as consideration for sale of company's property**

**96.**—(1) This Article applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business or property is proposed to be transferred or sold to another company ("the transferee company"), whether or not the latter is a company within the meaning of the Companies Order.

(2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up ("the transferor company") may receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company.

(3) The sanction requisite under paragraph (2) is—

- (a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and
- (b) in the case of a creditors' voluntary winding up, that of either the High Court or the liquidation committee.

(4) Alternatively to paragraph (2), the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto), participate in the profits of, or receive any other benefit from, the transferee company.

(5) A sale or arrangement in pursuance of this Article is binding on members of the transferor company.

(6) A special resolution is not invalid for the purposes of this Article by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by the High Court, the special resolution is not valid unless sanctioned by the Court.

### **Dissent from arrangement under Article 96**

**97.**—(1) This Article applies in the case of a voluntary winding up where, for the purposes of Article 96(2) or (4), there has been passed a special resolution of the transferor company providing the sanction requisite for the liquidator under that Article.

(2) If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing, addressed to the liquidator and left at the company's registered office within 7 days from the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under this Article.

(3) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(4) For the purposes of an arbitration under this Article, the provisions of the Companies Clauses Consolidation Act 1845<sup>(5)</sup> with respect to the settlement of disputes by arbitration are incorporated with this Order, and—

- (a) in the construction of those provisions this Order is deemed the special Act and "the company" means the transferor company, and
- (b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any 2 of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any 2 or more of them).

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(5) 1845 c. 16

### **Reference of questions to the High Court**

**98.**—(1) The liquidator or any contributory or creditor may apply to the High 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 High 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 on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) An office copy of an order made by virtue of this Article staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

### **No liquidator appointed or nominated by company**

**99.**—(1) This Article applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.

(2) The powers of the directors shall not be exercised, except with the sanction of the High Court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with Article 84 (creditors' meeting) and Article 85 (statement of affairs), during the period before the appointment or nomination of a liquidator of the company.

(3) Paragraph (2) does not apply in relation to the powers of the directors—

- (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and
- (b) to do all such other things as may be necessary for the protection of the company's assets.

(4) If the directors of the company without reasonable excuse contravene this Article, they shall be guilty of an offence.

### **Expenses of voluntary winding up**

**100.** All expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

### **Saving for certain rights**

**101.** The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the High 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.

## CHAPTER VI

### WINDING UP BY THE HIGH COURT

#### *Grounds and effect of winding-up petition*

### **Circumstances in which company may be wound up by the High Court**

**102.** A company may be wound up by the High 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 Article 127 of the Companies Order (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 Article 3 of the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986<sup>(6)</sup>,
- (d) the company does not commence its business within one year from its incorporation or suspends its business for a 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.

### **Definition of inability to pay debts; the statutory demand**

**103.**—(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 demand (known as “the statutory demand”) in the prescribed form requiring the company to pay the sum 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 Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>(7)</sup>, or
- (c) 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
- (d) 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
- (e) if it is otherwise proved to the satisfaction of the High 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 High 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 paragraph (1)(a) is subject to increase or reduction by order under Article 362(1)(a).

### **Application for winding up**

**104.**—(1) Subject to the provisions of this Article, an application to the High 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 of any of those parties, together or separately.

(2) Except as mentioned in paragraph (3), a contributory is not entitled to present a winding-up petition unless either—

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<sup>(6)</sup> 1986 NI 9

<sup>(7)</sup> 1981 NI 6

- (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 Article 63 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 Article 102(f) and (g), and paragraph (2) does not then apply; but unless the person is a contributory otherwise than under Article 63, he may not in his character as contributory petition on any other ground.

(4) Paragraph (3) is deemed included in Chapter VII of Part VI of the Companies Order (redeemable shares; purchase by a company of its own shares) for the purposes of the Department's power to make regulations under Article 189 of that Order.

(5) A winding-up petition may be presented by the Department—

- (a) if the ground of the petition is that in Article 102(b) or (c), or
- (b) in a case falling within Article 433 of the Companies Order (expedient in the public interest, following report of inspectors, etc.).

(6) Where a company is being wound up voluntarily, a winding-up petition may be presented by the official receiver as well as by any other person authorised in that behalf under the other provisions of this Article; but the High 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.

#### **Powers of High Court on hearing of petition**

**105.**—(1) On hearing a winding-up petition the High 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 High Court, if it is of the 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.

#### **Power to stay or restrain proceedings against company**

**106.**—(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, 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 High Court to restrain further proceedings in the action or proceeding;

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

(2) In the case of a company registered under Article 629 of the Companies Order (pre-1862 companies; companies formed under legislation other than the Companies Acts) or the previous corresponding legislation, where the application to stay or restrain is by a creditor, this Article extends to actions and proceedings against any contributory of the company.

#### **Avoidance of property dispositions, etc.**

**107.** In a winding up by the High 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.

#### **Avoidance of sequestration or distress**

**108.** Where a company is being wound up by the High Court, any sequestration or distress put in force against the estate or effects of the company after the commencement of the winding up is void.

### *Commencement of winding up*

#### **Commencement of winding up by the High Court**

**109.**—(1) If, before the presentation of a petition for the winding up of a company by the High Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the Court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(2) In any other case, the winding up of a company by the High Court is deemed to commence at the time of the presentation of the petition for winding up.

#### **Consequences of winding-up order**

**110.**—(1) On the making of a winding-up order, an office copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar for registration.

(2) When a winding-up order has been made or a provisionalliquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the High Court and subject to such terms as the Court may impose.

(3) When an order has been made for winding up a company registered under Article 629 of the Companies Order, no action or proceeding shall be commenced or proceeded with against the company or its property or any contributory of the company, in respect of any debt of the company, except by leave of the High Court, and subject to such terms as the Court may impose.

(4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

### *Investigation procedures*

#### **Company's statement of affairs**

**111.**—(1) Where the High Court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.



(2) The statement shall be verified by affidavit by the persons required to submit it and 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 or as the official receiver may require.

(3) The persons referred to in paragraph (1) are—

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) those who are in the company’s employment, or have been in its employment within that year, and are in the official receiver’s opinion capable of giving the information required;
- (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this Article to submit a statement of affairs to the official receiver, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2); or
- (b) either when giving the notice mentioned in paragraph (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) In this Article—

“employment” includes employment under a contract for services; and

“the relevant date” means—

- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
- (b) in a case where no such appointment is made, the date of the winding-up order.

(7) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

### **Investigation by official receiver**

**112.**—(1) Where a winding-up order is made by the High Court, it is the duty of the official receiver to investigate—

- (a) if the company has failed, the causes of the failure; and
- (b) generally, the promotion, formation, business, dealings and affairs of the company,

and to make such report (if any) to the Court as he thinks fit.

(2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

### **Public examination of officers**

**113.**—(1) Where a company is being wound up by the High Court, the official receiver may at any time before the dissolution of the company apply to the Court for the public examination of any person who—

- (a) is or has been an officer of the company; or
- (b) has acted as liquidator or administrator of the company or as receiver or manager; or
- (c) not being a person falling within sub-paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if he is requested in accordance with the rules to do so by—

- (a) one-half, in value, of the company's creditors; or
- (b) three-quarters, in value, of the company's contributories.

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the Court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

(4) The following may take part in the public examination of a person under this Article and may question that person concerning the matters mentioned in paragraph (3), namely—

- (a) the official receiver;
- (b) the liquidator of the company;
- (c) any person who has been appointed as special manager of the company's property or business;
- (d) any creditor of the company who has tendered a proof;
- (e) any contributory of the company.

### **Enforcement of Article 113**

**114.**—(1) If a person without reasonable excuse fails at any time to attend his public examination under Article 113, he is guilty of a contempt of court and liable to be punished accordingly.

(2) In a case where a person without reasonable excuse fails at any time to attend his examination under Article 113 or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that Article, the High Court may cause a warrant to be issued to a constable—

- (a) for the arrest of that person; and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession.

(3) In such a case the High Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the Court may order.

### *Appointment of liquidator*

### **Appointment and powers of provisional liquidator**

**115.**—(1) Subject to the provisions of this Article, the High Court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.

(3) The provisional liquidator shall carry out such functions as the High Court may confer on him.

(4) When a liquidator is provisionally appointed by the High Court, his powers may be limited by the order appointing him.

### **Functions of official receiver in relation to office of liquidator**

**116.**—(1) The following provisions of this Article have effect, subject to Article 119, on a winding-up order being made by the High Court.

(2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Part.

(3) The official receiver is, by virtue of his office, the liquidator during any vacancy.

(4) At any time when he is the liquidator of the company, the official receiver may summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver.

(5) It is the duty of the official receiver—

(a) as soon as practicable within the period of 12 weeks from the day on which the winding-up order was made, to decide whether to exercise his power under paragraph (4) to summon meetings, and

(b) if in pursuance of sub-paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the High Court and to the company's creditors and contributories, and

(c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under paragraph (4) if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of the company's creditors;

and accordingly, where the duty imposed by sub-paragraph (c) arises before the official receiver has performed a duty imposed by sub-paragraph (a) or (b), he is not required to perform the latter duty.

(6) A notice given under paragraph (5)(b) to the company's creditors shall contain an explanation of the creditors' power under paragraph (5)(c) to require the official receiver to summon meetings of the company's creditors and contributories.

### **Appointment by Department**

**117.**—(1) In a winding up by the High Court the official receiver may, at any time when he is liquidator of the company, apply to the Department for the appointment of a person as liquidator in his place.

(2) If meetings are held in pursuance of a decision under Article 116(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Department.

(3) On an application under paragraph (1), or a reference made in pursuance of a decision under paragraph (2), the Department shall either make an appointment or decline to make one.

(4) Where a liquidator has been appointed by the Department under paragraph (3), the liquidator shall give notice of his appointment to the company's creditors or, if the High Court so allows, shall advertise his appointment in accordance with the directions of the Court.

(5) In that notice or advertisement the liquidator shall—

- (a) state whether he proposes to summon a general meeting of the company's creditors under Article 120 for the purpose of determining (together with any meeting of contributories) whether a liquidation committee should be established under that Article, and
- (b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that Article to require him to summon one.

### **Choice of liquidator at meetings of creditors and contributories**

**118.**—(1) This Article applies where a company is being wound up by the High Court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.

(2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator.

(3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.

(4) In the case of different persons being nominated, any contributory or creditor may, within 7 days from the date on which the nomination was made by the creditors, apply to the High Court for an order either—

- (a) appointing the person nominated as liquidator by the contributories to be a 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.

### **Appointment by the High Court following administration or voluntary arrangement**

**119.**—(1) Where a winding-up order is made immediately upon the discharge of an administration order, the High Court may appoint as liquidator of the company the person who has ceased on the discharge of the administration order to be the administrator of the company.

(2) Where a winding-up order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the company under Part II, the High Court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made.

(3) Where the High Court makes an appointment under this Article, the official receiver does not become the liquidator as otherwise provided by Article 116(2), and he has no duty under Article 116(5)(a) or (b) in respect of the summoning of creditors' or contributories' meetings.

### *Liquidation committees*

#### **Liquidation committee**

**120.**—(1) Where a winding-up order has been made and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator, those meetings may establish a committee ("the liquidation committee") to exercise the functions conferred on it by or under this Order.

(2) The liquidator (not being the official receiver) may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.

The liquidator (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.

(3) Where meetings are summoned under this Article, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the High Court otherwise orders.

(4) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is liquidator; but at any such time its functions are vested in the Department except to the extent that the rules otherwise provide.

(5) Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested in the Department except to the extent that the rules otherwise provide.

### *The liquidator's functions*

#### **General functions in winding up by the High Court**

**121.**—(1) The functions of the liquidator of a company which is being wound up by the High Court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.

(2) It is the duty of the liquidator of a company which is being wound up by the High Court, if he is not the official receiver—

- (a) to furnish the official receiver with such information,
- (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
- (c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

#### **Custody of company's property**

**122.** When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property to which the company is or appears to be entitled.

#### **Vesting of company property in liquidator**

**123.**—(1) When a company is being wound up by the High Court, the Court may on the application of the liquidator by order direct that all or any part of the property belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.

(2) The liquidator may, after giving such indemnity (if any) as the High Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

### **Duty to summon final meeting**

**124.**—(1) Subject to paragraph (2), if it appears to the liquidator of a company which is being wound up by the High Court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's creditors which—

- (a) shall receive the liquidator's report of the winding up, and
- (b) shall determine whether the liquidator should have his release under Article 148.

(2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.

(3) In the carrying out of his functions in the winding up it is the duty of the liquidator to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this Article.

### *General powers of High Court*

### **Power to stay winding up**

**125.**—(1) The High Court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) The High Court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) An office copy of every order made under this Article shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

### **Settlement of list of contributories and application of assets**

**126.**—(1) As soon as may be after making a winding-up order, the High Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of the Companies Order or this Order, and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the High Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list, the High Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

### **Debts due from contributory to company**

**127.**—(1) The High Court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him (or from the estate of the person whom he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of the Companies Order or this Order.

(2) The High Court in making such an order may—

- (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and
- (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate), any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

#### **Power to make calls**

**128.**—(1) The High Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the High Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

#### **Payment into bank of money due to company**

**129.**—(1) The High Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the Court may appoint for the purpose to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All money and securities paid or delivered into any such bank as is mentioned in paragraph (1) in the event of a winding up by the High Court are subject in all respects to the orders of the Court.

#### **Order on contributory to be conclusive evidence**

**130.**—(1) An order made by the High Court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings.

#### **Power to exclude creditors not proving in time**

**131.** The High Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

#### **Adjustment of rights of contributories**

**132.** The High Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

### **Inspection of books by creditors, etc.**

**133.**—(1) The High Court may, at any time after making a winding-up order, make such order for inspection of the company's books and papers by creditors and contributories as the Court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this Article excludes or restricts any statutory rights of—

- (a) a Northern Ireland department; or
- (b) a department of the Government of the United Kingdom; or
- (c) a person acting under the authority of either such department.

### **Payment of expenses of winding up**

**134.** The High Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the Court thinks just.

### **Power to arrest absconding contributory**

**135.** The High Court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the Court may order.

### **Powers of High Court to be cumulative**

**136.** Powers conferred by this Order and the Companies Order on the High Court are in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sum.

### **Delegation of powers to liquidator**

**137.**—(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the High Court by the Companies Order and this Order in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,
- (c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,
- (d) the making of calls,
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the Court's control.

(2) But the liquidator shall not, without the special leave of the High Court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.



## CHAPTER VII LIQUIDATORS

### *Preliminary*

#### **Style and title of liquidators**

**138.** The liquidator of a company shall be described—

- (a) where a person other than the official receiver is liquidator, by the style of “the liquidator” of the particular company, or
- (b) where the official receiver is liquidator, by the style of “the official receiver and liquidator” of the particular company;

and in neither case shall he be described by an individual name.

#### **Corrupt inducement affecting appointment**

**139.** A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company’s liquidator shall be guilty of an offence.

### *Liquidator’s powers and duties*

#### **Voluntary winding up**

**140.—**(1) This Article has effect where a company is being wound up voluntarily, but subject to Article 141 in the case of a creditors’ voluntary winding up.

(2) The liquidator may—

- (a) in the case of a members’ voluntary winding up, with the sanction of an extraordinary resolution of the company, and
- (b) in the case of a creditor’s voluntary winding up, with the sanction of the High Court or the liquidation committee (or, if there is no such committee, a meeting of the company’s creditors),

exercise any of the powers specified in Part I of Schedule 2 (payment of debts, compromise of claims, etc.).

(3) The liquidator may, without sanction, exercise either of the powers specified in Part II of Schedule 2 (institution and defence of proceedings; carrying on the business of the company) and any of the general powers specified in Part III of Schedule 2.

(4) The liquidator may—

- (a) exercise the High Court’s power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),
- (b) exercise the Court’s power of making calls,
- (c) summon general meetings of the company for the purpose of obtaining its sanction by special or extraordinary resolution or for any other purpose he may think fit.

(5) The liquidator shall pay the company’s debts and adjust the rights of the contributories among themselves.

(6) Where the liquidator in exercise of the powers conferred on him by this Order disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

### **Creditors' voluntary winding up**

**141.**—(1) This Article applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

(2) The powers conferred on the liquidator by Article 140 shall not be exercised, except with the sanction of the High Court, during the period before the holding of the creditors' meeting under Article 84.

(3) Paragraph (2) does not apply in relation to the power of the liquidator—

- (a) to take into his custody or under his control all the property to which the company is or appears to be entitled;
- (b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
- (c) to do all such other things as may be necessary for the protection of the company's assets.

(4) The liquidator shall attend the creditors' meeting held under Article 84 and shall report to the meeting on any exercise by him of his powers (whether or not under this Article or under Article 98 or 140).

(5) If default is made—

- (a) by the company in complying with paragraph (1) or (2) of Article 84, or
- (b) by the directors in complying with paragraph (1) or (2) of Article 85,

the liquidator shall, within 7 days from the relevant day, apply to the High Court for directions as to the manner in which that default is to be remedied.

(6) "The relevant day" means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse contravenes this Article, he shall be guilty of an offence.

### **Winding up by the High Court**

**142.**—(1) Where a company is being wound up by the High Court, the liquidator may—

- (a) with the sanction of the Court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 2 (payment of debts; compromise of claims, etc.; institution and defence of proceedings; carrying on of the business of the company), and
- (b) with or without that sanction, exercise any of the general powers specified in Part III of Schedule 2.

(2) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Order—

- (a) disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), or
- (b) employs a solicitor to assist him in the carrying out of his functions,

he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

(3) The exercise by the liquidator in a winding up by the High Court of the powers conferred by this Article is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

### **Supplementary powers**

**143.**—(1) This Article applies in the case of a company which is being wound up by the High Court.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).

(3) The liquidator may apply to the High Court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Order, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the High Court; and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

### **Enforcement of liquidator's duty to make returns, etc.**

**144.**—(1) If a liquidator who has made any default—

- (a) in filing, delivering or making any return, account or other document, or
- (b) in giving any notice which he is by law required to file, deliver, make or give,

fails to make good the default within 14 days from the service on him of a notice requiring him to do so, the High Court has the following powers.

(2) On an application made by any creditor or contributory of the company, or by the registrar, the High Court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The High Court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on a liquidator in respect of any such default as is mentioned in paragraph (1).

### *Removal: vacation of office*

### **Removal, etc. (voluntary winding up)**

**145.**—(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.

(2) Subject to paragraph (3), the liquidator may be removed from office only by an order of the High Court or—

- (a) in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose, or
- (b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.

(3) Where the liquidator was appointed by the High Court under Article 94, a meeting such as is mentioned in paragraph (2) shall be summoned for the purpose of replacing him only if he thinks fit or the Court so directs or the meeting is requested, in accordance with the rules—

- (a) in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting, or
- (b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors.

(4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar.

(6) Where—

- (a) in the case of a members' voluntary winding up, a final meeting of the company has been held under Article 80, or
- (b) in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under Article 92,

the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with paragraph (3) of that Article and has given notice to the registrar that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.

#### **Removal, etc. (winding up by the High Court)**

**146.**—(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Subject to paragraphs (3) and (4), the liquidator may be removed from office only by an order of the High Court or by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules; and a provisional liquidator may be removed from office only by an order of the Court.

(3) Where—

- (a) the official receiver is liquidator otherwise than in succession under Article 116(3) to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories, or
- (b) the liquidator was appointed by the High Court otherwise than under Article 118(4)(a) or 119(1), or was appointed by the Department,

a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if he thinks fit, or the Court so directs, or the meeting is requested, in accordance with the rules, by not less than one-quarter, in value, of the creditors.

(4) If appointed by the Department, the liquidator may be removed from office by a direction of the Department.

(5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the High Court.

(7) Where a final meeting has been held under Article 124 (liquidator's report on completion of winding up), the liquidator whose report was considered at the meeting shall vacate office as soon

as he has given notice to the High Court and the registrar that the meeting has been held and of the decisions (if any) of the meeting.

### *Release of liquidator*

#### **Release (voluntary winding up)**

**147.**—(1) This Article applies with respect to the release of the liquidator of a company which is being wound up voluntarily.

(2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—

- (a) in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company’s creditors that has not resolved against his release or who has died, the time at which notice is given to the registrar in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of the company’s creditors that has resolved against his release, or by the High Court, or who has vacated office under Article 145(4), such time as the Department may, on the application of that person, determine;
- (c) in the case of a person who has resigned, such time as may be prescribed;
- (d) in the case of a person who has vacated office under Article 145(6)(a), the time at which he vacated office;
- (e) in the case of a person who has vacated office under sub-paragraph (b) of Article 145(6)—
  - (i) if the final meeting of the creditors referred to in that sub-paragraph has resolved against that person’s release, such time as the Department may, on an application by that person, determine, and
  - (ii) if that meeting has not resolved against that person’s release, the time at which he vacated office.

(3) Where a liquidator has his release under paragraph (2), he is, with effect from the time specified in that paragraph, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator.

(4) Nothing in this Article prevents the exercise, in relation to a person who has had his release under paragraph (2), of the High Court’s powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

#### **Release (winding up by the High Court)**

**148.**—(1) This Article applies with respect to the release of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Where the official receiver has ceased to be liquidator and a person becomes liquidator in his stead, the official receiver has his release with effect from the following time, that is to say—

- (a) in a case where that person was nominated by a general meeting of creditors or contributories, or was appointed by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced;
- (b) in a case where that person is appointed by the Court, such time as the Court may determine.

(3) If the official receiver while he is a liquidator gives notice to the Department that the winding up is for practical purposes complete, he has his release with effect from such time as the Department may determine.

(4) A person other than the official receiver who has ceased to be a liquidator has his release with effect from the following time, that is to say—

- (a) in the case of a person who has been removed from office by a general meeting of creditors that has not resolved against his release or who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of creditors that has resolved against his release, or by the High Court or the Department, or who has vacated office under Article 146(5), such time as the Department may, on an application by that person, determine;
- (c) in the case of a person who has resigned, such time as may be prescribed;
- (d) in the case of a person who has vacated office under Article 146(7)—
  - (i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine, and
  - (ii) if that meeting has not so resolved, the time at which that person vacated office.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the High Court may, on an application by him, determine.

(6) Where the official receiver or a liquidator or provisional liquidator has his release under this Article, he is, with effect from the time specified in the preceding provisions of this Article, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator.

(7) Nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

## CHAPTER VIII

### PROVISIONS OF GENERAL APPLICATION IN WINDING UP

#### *Preferential debts*

#### **Preferential debts (general provision)**

**149.**—(1) In a winding up the company's preferential debts (within the meaning of Article 346) shall be paid in priority to all other debts.

(2) Preferential debts—

- (a) rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and
- (b) 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 secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

### **Preferential charge on goods distrained**

**150.**—(1) This Article applies where a company is being wound up by the High Court, and is without prejudice to Article 108 (avoidance of sequestration or distress).

(2) Where any person has distrained upon the goods or effects of the company within the 3 months immediately preceding the date of the winding-up order, those goods or effects, or the proceeds of their sale, shall be charged for the benefit of the company with the preferential debts of the company to the extent that the company's property is for the time being insufficient for meeting them.

(3) Where by virtue of a charge under paragraph (2) any person surrenders any goods or effects to a company or makes a payment to a company, that person ranks, in respect of the amount of the proceeds of sale of those goods or effects by the liquidator or (as the case may be) the amount of the payment, as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

### *Special managers*

### **Power to appoint special manager**

**151.**—(1) Where a company has gone into liquidation or a provisional liquidator has been appointed, the High Court may, on an application under this Article, appoint any person to be the special manager of the business or property of the company.

(2) The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors or contributories or members generally, require the appointment of another person to manage the company's business or property.

(3) The special manager has such powers as may be entrusted to him by the High Court.

(4) The High Court's power to entrust powers to the special manager includes power to direct that any provision of this Order that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying out by him of any of the functions of the provisional liquidator or liquidator.

(5) The special manager shall—

- (a) give such security as may be prescribed;
- (b) prepare and keep such accounts as may be prescribed; and
- (c) produce those accounts in accordance with the rules to the Department or to such other persons as may be prescribed.

### *Disclaimer*

### **Power to disclaim onerous property**

**152.**—(1) Subject to the provisions of this Article and Article 153, where a company is being wound up, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this Article—

- (a) any unprofitable contract, and
- (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

- (3) A disclaimer under this Article—
- (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
  - (b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.
- (4) A notice of disclaimer shall not be given under this Article in respect of any property if—
- (a) a person interested in the property has applied in writing to the liquidator or one of this predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and
  - (b) the period of 28 days from the day on which that application was made, or such longer period as the High Court may allow, has expired without a notice of disclaimer having been given under this Article in respect of that property.
- (5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

#### **Disclaimer of leaseholds**

**153.**—(1) The disclaimer under Article 152 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—

- (a) no application under Article 155 is made with respect to that property before the expiration of 14 days from the day on which the last notice served under this paragraph was served; or
- (b) where such an application has been made, the High Court directs that the disclaimer shall take effect.

(2) Where the High Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 155, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

(3) For the purposes of this Article, property held under a fee farm grant creating the relation of landlord and tenant is property of a leasehold nature and a reference to an underlessee includes a person who holds a lease from the fee farm grantee.

#### **Land subject to rentcharge**

**154.**—(1) The following applies where, in consequence of the disclaimer under Article 152 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in paragraph (2) as “the proprietor”).

(2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

#### **Powers of High Court (general)**

**155.**—(1) Where the liquidator has disclaimed property under Article 152 an application under this Article may be made to the High Court by—

- (a) any person who claims an interest in the disclaimed property, or
- (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.



(2) Subject to paragraph (3) and Article 156, the High Court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—

- (a) a person entitled to it or a trustee for such a person, or
- (b) a person subject to such a liability as is mentioned in paragraph (1)(b) or a trustee for such a person.

(3) The High Court shall not make an order under paragraph (2)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this Article shall be taken into account in assessing for the purpose of Article 152(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(5) An order under this Article vesting property in any person need not be completed by conveyance, assignment or transfer.

#### **Powers of High Court (leaseholds)**

**156.**—(1) The High Court shall not make an order under Article 155 vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—

- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or
- (b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

(2) For the purposes of an order under Article 155 relating to only part of any property comprised in a lease, the requirements of paragraph (1) apply as if the lease comprised only the property to which the order relates.

(3) Where paragraph (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under Article 155 on the terms required by virtue of that paragraph, the High Court may, by order under that Article, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.

(4) An order of the High Court under paragraph (3) may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

(5) Where paragraph (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under Article 155, that person is excluded from all interest in the property.

(6) Paragraph (3) of Article 153 shall apply for the purposes of this Article as it applies for the purposes of that Article.

#### *Miscellaneous matters*

#### **Rescission of contracts by the High Court**

**157.**—(1) The High Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just.

(2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

### **Power to make over assets to employees**

**158.**—(1) On the winding up of a company (whether by the High Court or voluntarily), the liquidator may, subject to the provisions of this Article, make any payment which the company has, before the commencement of the winding up, decided to make under Article 668 of the Companies Order (power to provide for employees or former employees on cessation or transfer of business).

(2) The power which a company may exercise by virtue only of that Article may be exercised by the liquidator after the winding up has commenced if, after the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up, the exercise of that power has been sanctioned by such a resolution of the company as would be required of the company itself by paragraph (3) of that Article before that commencement, if sub-paragraph (b) of that paragraph were omitted and any other requirement applicable to its exercise by the company had been met.

(3) Any payment which may be made by a company under this Article (that is, a payment after the commencement of its winding up) may be made out of the company's assets which are available to the members on the winding up.

(4) On a winding up by the High Court, the exercise by the liquidator of his powers under this Article is subject to the Court's control, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the power.

(5) Paragraphs (1) and (2) have effect notwithstanding anything in any rule of law or in Article 93 of this Order (property of company after satisfaction of liabilities to be distributed among members).

### **Notification that company is in liquidation**

**159.**—(1) When a company is being wound up, whether by the High Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company, or a liquidator of the company, or a receiver or manager of the company's property, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this Article, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence.

### **Interest on debts**

**160.**—(1) In a winding up interest is payable in accordance with this Article on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.

(3) All interest under this Article ranks equally, whether or not the debts on which it is payable rank equally.

(4) The rate of interest payable under this Article in respect of any debt ("the official rate") is whichever is the greater of—

- (a) the rate applicable to a money judgment of the High Court on the day on which the company went into liquidation, and
- (b) the rate applicable to that debt apart from the winding up.

### **Company's books to be evidence**

**161.** Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

### **Information as to pending liquidations**

**162.—**(1) If the winding up of a company is not concluded within one year from its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If a liquidator contravenes this Article, he shall be guilty of an offence and for continued contravention, he shall be guilty of a continuing offence.

### **Resolutions passed at adjourned meetings**

**163.** Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

### **Meeting to ascertain wishes of creditors or contributories**

**164.—**(1) The High Court may—

- (a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and
- (b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the Companies Order or the company's articles.

### **Affidavits, etc., in United Kingdom and elsewhere**

**165.—**(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in Northern Ireland before any court, judge or person lawfully authorised to take and receive affidavits, and shall, if sworn in Great Britain or elsewhere in Her Majesty's dominions before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice-consuls in any place outside Her Majesty's dominions, be treated as an affidavit sworn under or for the purposes of this Part.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

## CHAPTER IX

### DISSOLUTION OF COMPANIES AFTER WINDING UP

#### **Dissolution (voluntary winding up)**

**166.**—(1) This Article applies, in the case of a company wound up voluntarily, where the liquidator has sent to the registrar his final account and return under Article 80 (members' voluntary) or Article 92 (creditors' voluntary).

(2) The registrar on receiving the account and return shall forthwith register them; and on the expiration of 3 months from the registration of the return the company is deemed to be dissolved.

(3) However, the High Court may, on the application of the liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(4) The person on whose application an order of the High Court under this Article is made shall within 7 days from the making of the order deliver to the registrar an office copy of the order for registration; and if that person contravenes this paragraph he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

#### **Early dissolution**

**167.**—(1) Where an order for the winding up of a company has been made by the High Court, the official receiver, if—

- (a) he is the liquidator of the company, and
- (b) it appears to him—

- (i) that the realisable assets of the company are insufficient to cover the expenses of the winding up, and

- (ii) that the affairs of the company do not require any further investigation,

may at any time apply to the registrar for the early dissolution of the company.

(2) Before making that application, the official receiver shall give not less than 28 days' notice of his intention to do so to the company's creditors and contributories and, if there is an administrative receiver of the company, to that receiver.

(3) With the giving of that notice the official receiver ceases (subject to any directions under Article 168) to be required to perform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Order, apart from a duty to make an application under paragraph (1).

(4) On the receipt of the official receiver's application under paragraph (1) the registrar shall forthwith register it and, subject to paragraph (5), at the expiration of 3 months from the day of the registration of the application, the company shall be dissolved.

(5) The Department may, on the application of the official receiver or any other person who appears to the Department to be interested, give directions under Article 168 at any time before the end of that period.

#### **Consequence of notice under Article 167**

**168.**—(1) Where a notice has been given under Article 167(2), the official receiver or any creditor or contributory of the company, or the administrative receiver of the company (if there is one) may apply to the Department for directions under this Article.

(2) The grounds on which that application may be made are—

- (a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;
  - (b) that the affairs of the company do require further investigation; or
  - (c) that for any other reason the early dissolution of the company is inappropriate.
- (3) Directions under this Article—
- (a) are directions making such provision as the Department thinks fit for enabling the winding up of the company to proceed as if no notice had been given under Article 167(2), and
  - (b) may, in the case of an application under Article 167(4), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Department thinks fit.
- (4) An appeal to the High Court lies from any decision of the Department on an application for directions under this Article.
- (5) The person on whose application any directions are given under this Article, or in whose favour an appeal with respect to an application for such directions is determined, shall, within 7 days from the giving of the directions or the determination of the appeal, deliver to the registrar for registration such a copy of the directions or determination as is prescribed.
- (6) If a person without reasonable excuse contravenes paragraph (5), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

#### **Dissolution otherwise than under Article 167**

**169.**—(1) Where the registrar receives—

- (a) a notice served for the purposes of Article 146(7) (final meeting of creditors and vacation of office by liquidator), or
- (b) a notice from the official receiver that the winding up of a company by the High Court is complete,

the registrar shall, on receipt of the notice, forthwith register it; and, subject to paragraphs (2) to (4), at the expiration of 3 months from the day of the registration of the notice, the company shall be dissolved.

(2) The Department may, on the application of the official receiver or any other person who appears to the Department to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Department thinks fit.

(3) An appeal to the High Court lies from any decision of the Department on an application for a direction under paragraph (2).

(4) The person—

- (a) on whose application a direction is given under paragraph (2); or
  - (b) in whose favour an appeal with respect to an application for such a direction is determined;
- shall, within 7 days from the giving of the direction, the determination of the appeal or the making of the order, deliver to the registrar for registration such a copy of the direction or determination as is prescribed.

(5) If a person without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

## CHAPTER X

### MALPRACTICE BEFORE AND DURING LIQUIDATION; PENALISATION OF COMPANIES AND COMPANY OFFICERS; INVESTIGATIONS AND PROSECUTIONS

#### *Offences of fraud, deception, etc.*

#### **Fraud, etc., in anticipation of winding up**

**170.**—(1) When a company is ordered to be wound up by the High Court, or passes a resolution for voluntary winding up, any person who, being a past or present officer of the company, has, within the 12 months immediately preceding the commencement of the winding up—

- (a) concealed any part of the company's property to the value of £500 or more, or concealed any debt due to or from the company, or
- (b) fraudulently removed any part of the company's property to the value of £500 or more, or
- (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or
- (d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or
- (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business),

shall be guilty of an offence.

(2) Such a person as is mentioned in paragraph (1) shall be guilty of an offence if within the period mentioned in that paragraph he has been privy to the doing by others of any of the things mentioned in sub-paragraphs (c), (d) and (e) of that paragraph; and he shall be guilty of an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in sub-paragraphs (a) to (f) of that paragraph, or is privy to the doing by others of any of the things mentioned in sub-paragraphs (c) to (e) of that paragraph.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence—

- (a) for a person charged under sub-paragraph (a) or (f) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub-paragraphs) to prove that he had no intent to defraud, and
- (b) for a person charged under sub-paragraph (c) or (d) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub-paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, shall be guilty of an offence and shall, on conviction on indictment, be liable to the same penalty as if he had been convicted of handling stolen goods.

(6) The money sums specified in sub-paragraphs (a) and (b) of paragraph (1) are subject to increase or reduction by order under Article 362(1)(a).

### **Transactions in fraud of creditors**

**171.**—(1) When a company is ordered to be wound up by the High Court or passes a resolution for voluntary winding up, a person who, being at the time an officer of the company,—

- (a) within the 5 years immediately preceding the commencement of the winding up, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the enforcement of a judgment against, the company's property, or
- (b) has concealed or removed any part of the company's property since, or within the 2 months immediately preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the company,

shall be guilty of an offence.

(2) It is a defence for a person charged under paragraph (1) to prove that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

### **Misconduct in course of winding up**

**172.**—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business), or
- (b) does not deliver up to the liquidator (or as he directs) all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up, or
- (c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
- (d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable, or
- (e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company's property or affairs,

shall be guilty of an offence.

(2) Any person mentioned in paragraph (1) who, after the commencement of the winding up, attempts to account for any part of the company's property by fictitious losses or expenses shall be guilty of an offence; and if he so attempts at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up he shall be guilty of an offence.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence—

- (a) for a person charged under sub-paragraph (a), (b) or (c) of paragraph (1) to prove that he had no intent to defraud, and
- (b) for a person charged under sub-paragraph (e) of that paragraph to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

### **Falsification of company's books**

**173.** When a company is being wound up, an officer or contributory of the company who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the

making of any false or fraudulent entry in any register, accounting records or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence.

#### **Material omissions from statement relating to company's affairs**

**174.**—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company, makes any material omission in any statement relating to the company's affairs shall be guilty of an offence.

(2) When a company has been ordered to be wound up by the High Court, or has passed a resolution for voluntary winding up, any person mentioned in paragraph (1) who, prior to the winding up, has made any material omission in any such statement shall be guilty of an offence.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence for a person charged under this Article to prove that he had no intent to defraud.

#### **False representations to creditors**

**175.**—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

(a) makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up; or

(b) prior to the winding up, has made any false representation, or committed any other fraud, for the purpose mentioned in sub-paragraph (a);

shall be guilty of an offence.

(2) For the purposes of this Article, "officer" includes a shadow director.

#### *Penalisation of directors and officers*

#### **Summary remedy against delinquent directors, liquidators, etc.**

**176.**—(1) This Article applies if in the course of the winding up of a company it appears that a person who—

(a) is or has been an officer of the company,

(b) has acted as liquidator, administrator or administrative receiver of the company, or

(c) not being a person falling within sub-paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,

has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) The reference in paragraph (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator or administrator of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator or administrator of the company.

(3) The High Court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within paragraph (1) and order him—

(a) to repay, restore or account for the money or property, or any part of it, with interest at such rate as the Court thinks just, or



(b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

(4) The power to make an application under paragraph (3) in relation to a person who has acted as liquidator or administrator of the company is not exercisable, except with the leave of the High Court, after that person has had his release.

(5) The power of a contributory to make an application under paragraph (3) is not exercisable except with the leave of the High Court, but is exercisable notwithstanding that he will not benefit from any order the Court may make on the application.

(6) In this Article "company" includes a building society within the meaning of the Building Societies Act 1986<sup>(8)</sup> and "officer" includes a director (but not a shadow director) of a building society.

### **Fraudulent trading**

**177.** If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the High Court, on the application of the liquidator, may declare that any persons who were knowingly parties to the carrying on of the business in such manner are to be liable to make such contributions (if any) to the company's assets as the Court thinks proper.

### **Wrongful trading**

**178.**—(1) Without prejudice to Article 177 and subject to paragraph (3), if in the course of the winding up of a company it appears that paragraph (2) applies in relation to a person who is or has been a director of the company, the High Court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the Court thinks proper.

(2) This paragraph applies in relation to a person if—

- (a) the company has gone into insolvent liquidation,
- (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and
- (c) that person was a director of the company at that time,

but the High Court shall not make a declaration under this Article in any case where the time mentioned in sub-paragraph (b) was before the coming into operation of this Article.

(3) The High Court shall not make a declaration under this Article with respect to any person if it is satisfied that after the condition specified in paragraph (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.

(4) For the purposes of paragraphs (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and

(b) the general knowledge, skill and experience that that director has.

(5) The reference in paragraph (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this paragraph a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) In this Article—

“company” includes a building society within the meaning of the Building Societies Act 1986<sup>(9)</sup>;

“director”—

(a) includes a shadow director; and

(b) includes a director (but not a shadow director) of a building society.

### **Proceedings under Articles 177 and 178**

**179.**—(1) On the hearing of an application under Article 177 or 178, the liquidator may himself give evidence or call witnesses.

(2) Where under either Article the High Court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the Court may—

(a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and

(b) make such further order as may be necessary for enforcing any charge imposed under this paragraph.

(3) For the purposes of paragraph (2), “assignee”—

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but

(b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the High Court makes a declaration under either Article in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Articles 177 and 178 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the Article is to be made.

(6) In this Article “company” includes a building society within the meaning of the Building Societies Act 1986<sup>(10)</sup>.

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(9) 1986 c. 53

(10) 1986 c. 53

### **Restriction on re-use of company names**

**180.**—(1) This Article applies to a person where a company (“the liquidating company”) has gone into insolvent liquidation on or after the coming into operation of this Article and he was a director or shadow director of the company at any time within the period of 12 months immediately preceding the day before it went into liquidation.

(2) For the purposes of this Article, a name is a prohibited name in relation to such a person if—

- (a) it is a name by which the liquidating company was known at any time in that period, or
- (b) it is a name which is so similar to a name falling within sub-paragraph (a) as to suggest an association with that company.

(3) Except with the leave of the High Court or in such circumstances as may be prescribed, a person to whom this Article applies shall not at any time within 5 years from the day on which the liquidating company went into liquidation—

- (a) be a director of any other company that is known by a prohibited name, or
- (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or
- (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.

(4) If a person contravenes this Article he shall be guilty of an offence.

(5) On an application for leave under paragraph (3), the Department or the official receiver may appear and call the attention of the High Court to any matters which seem to be relevant.

(6) References in this Article, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.

(7) For the purposes of this Article a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(8) In this Article—

“company” includes a company which may be wound up under Part VI or a building society within the meaning of the Building Societies Act 1986<sup>(11)</sup>;

“director” includes a director (but not a shadow director) of a building society.

### **Personal liability for debts, following contravention of Article 180**

**181.**—(1) A person is personally responsible for all the relevant debts of a company if at any time—

- (a) in contravention of Article 180, he is involved in the management of the company, or
- (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the High Court) by a person whom he knows at that time to be in contravention in relation to the company of Article 180.

(2) Where a person is personally responsible under this Article for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this Article or otherwise, is so liable.

(3) For the purposes of this Article the relevant debts of a company are—

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(11) 1986 c. 53

- (a) in relation to a person who is personally responsible under sub-paragraph(a) of paragraph (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
- (b) in relation to a person who is personally responsible under sub-paragraph (b) of paragraph (1), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that sub-paragraph.

(4) For the purposes of this Article, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this Article a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the leave of the High Court) by a person whom he knew at that time to be in contravention in relation to the company of Article 180 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

(6) In this Article—

“company” includes a company which may be wound up under Part VI or a building society within the meaning of the Building Societies Act 1986(12);

“director” includes a director (but not a shadow director) of a building society.

### *Investigation and prosecution of malpractice*

#### **Prosecution of delinquent officers and members of company**

**182.**—(1) If it appears to the High Court in the course of a winding up by the Court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter to the Director of Public Prosecutions for Northern Ireland, in this Article and Article 183 referred to as “the prosecuting authority”.

(2) If in the case of a winding up by the High Court it appears to the liquidator, not being the official receiver, that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.

(3) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, he shall—

- (a) forthwith report the matter to the prosecuting authority, and
- (b) furnish to that authority such information and give to him such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the authority requires.

(4) Where a report is made to him under paragraph (3), the prosecuting authority may, if he thinks fit, refer the matter to the Department for further enquiry; and the Department—

- (a) shall thereupon investigate the matter, and

(b) for the purpose of its investigation may exercise any of the powers which are exercisable by inspectors appointed under Article 424 or 425 of the Companies Order to investigate a company's affairs.

(5) If it appears to the High Court in the course of a voluntary winding up that—

(a) any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, and

(b) no report with respect to the matter has been made by the liquidator to the prosecuting authority under paragraph (3),

the Court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report.

(6) On a report being made under paragraph (5), this Article has effect as though the report had been made in pursuance of paragraph (3).

### **Obligations arising under Article 182**

**183.**—(1) For the purpose of an investigation by the Department under Article 182(4), any obligation imposed on a person by any provision of the Companies Order to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that paragraph is to be regarded as an obligation similarly to assist the Department in its investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by Article 182(4) may be used in evidence against him.

(3) Where criminal proceedings are instituted by the prosecuting authority or the Department following any report or reference under Article 182, the liquidator and every officer and agent of the company past and present (other than the defendant) shall give to that authority or the Department (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.

(4) In paragraph (3), “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(5) If a person fails or neglects to give assistance in the manner required by paragraph (3), the High Court may, on the application of the prosecuting authority or the Department (as the case may be) direct the person to comply with that paragraph; and if the application is made with respect to a liquidator, the Court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.