



Insolvency Act 1986

1986 CHAPTER 45

The First Group of Parts Company Insolvency ; Companies Winding Up

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

CHAPTER IV

CREDITORS' VOLUNTARY WINDING UP

97 Application of this Chapter

- (1) Subject as follows, this Chapter applies in relation to a creditors' voluntary winding up.
- (2) Sections 98 and 99 do not apply where, under section 96 in Chapter III, a members' voluntary winding up has become a creditors' voluntary winding up.

98 Meeting of creditors

- (1) The company shall—
 - (a) cause a meeting of its creditors to be summoned for a day not later than the 14th day after 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) cause the notices of the creditors' meeting to be sent by post to the creditors not less than 7 days before the day on which that meeting is to be held; and
 - (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality (that is to say the locality in which the company's principal place of business in Great Britain 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

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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 the relevant locality where, on the two 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's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (1)(c) and (2) (b) above apply separately in relation to each of those localities.
 - (4) Where the company had no place of business in Great Britain during the relevant period, references in subsections (1) (c) and (3) to the company's principal place of business in Great Britain are replaced by references to its registered office.
 - (5) In this section " 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.
 - (6) If the company without reasonable excuse fails to comply with subsection (1) or (2), it is guilty of an offence and liable to a fine.

99 Directors to lay statement of affairs before creditors

- (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 section 98 ; 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 fail to comply with subsection (1) or (2); or
 - (b) any director without reasonable excuse fails to comply with subsection (1), so far as requiring him to attend and preside at the creditors' meeting,
 the directors are or (as the case may be) the director is guilty of an offence and liable to a fine.

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100 Appointment of liquidator

- (1) The creditors and the company at their respective meetings mentioned in section 98 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 after the date on which the nomination was made by the creditors, apply to the 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.

101 Appointment of liquidation committee

- (1) The creditors at the meeting to be held under section 98 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 Act.
- (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 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.
- (4) In Scotland, the liquidation committee has, in addition to the powers and duties conferred and imposed on it by this Act, such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on liquidation committees by the rules.

102 Creditors' meeting where winding up converted under s. 96

Where, in the case of a winding up which was, under section 96 in Chapter III, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with section 95, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with section 98 in this Chapter.

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103 Cesser of directors' powers

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.

104 Vacancy in office of liquidator

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 court), the creditors may fill the vacancy.

105 Meetings of company and creditors at each year's end

- (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 Secretary of State 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 fails to comply with this section, he is liable to a fine.
- (4) Where under section 96 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under section 95 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 section to summon a meeting of creditors at the end of that year.

106 Final meeting prior to dissolution

- (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 Gazette specifying the time, place and object of the meeting, and published at least one month before it.
- (3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall send to the registrar of companies 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 subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.
- (5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (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 subsection as to the making of the return are, in respect of that meeting, deemed complied with.

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- (6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is liable to a fine.