



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 VIII

PROVISIONS OF GENERAL APPLICATION IN WINDING UP

Miscellaneous matters

186 Rescission of contracts by the court

- (1) The 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.

187 Power to make over assets to employees

- (1) On the winding up of a company (whether by the court or voluntarily), the liquidator may, subject to the following provisions of this section, make any payment which the company has, before the commencement of the winding up, decided to make under section 719 of the Companies Act (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 section 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

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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 section 719(3) before that commencement, if paragraph (b) of that subsection 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 section (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 court, the exercise by the liquidator of his powers under this section 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) Subsections (1) and (2) above have effect notwithstanding anything in any rule of law or in section 107 of this Act (property of company after satisfaction of liabilities to be distributed among members).

188 Notification that company is in liquidation

- (1) When a company is being wound up, whether by the 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 section, 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, is liable to a fine.

189 Interest on debts

- (1) In a winding up interest is payable in accordance with this section 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 section ranks equally, whether or not the debts on which it is payable rank equally.
- (4) The rate of interest payable under this section in respect of any debt (" the official rate " for the purposes of any provision of this Act in which that expression is used) is whichever is the greater of—
 - (a) the rate specified in section 17 of the Judgments Act 1838 on the day on which the company went into liquidation, and
 - (b) the rate applicable to that debt apart from the winding up.
- (5) In the application of this section to Scotland—
 - (a) references to a debt proved in a winding up have effect as references to a claim accepted in a winding up, and

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- (b) the reference to section 17 of the Judgments Act 1838 has effect as a reference to the rules.

190 Documents exempt from stamp duty

- (1) In the case of a winding up by the court, or of a creditors' voluntary winding up, the following has effect as regards exemption from duties chargeable under the enactments relating to stamp duties.
- (2) If the company is registered in England and Wales, the following documents are exempt from stamp duty—
 - (a) every assurance relating solely to freehold or leasehold property, or to any estate, right or interest in, any real or personal property, which forms part of the company's assets and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets, and
 - (b) every writ, order, certificate, or other instrument or writing relating solely to the property of any company which is being wound up as mentioned in subsection (1), or to any proceeding under such a winding up.

" Assurance " here includes deed, conveyance, assignment and surrender.

- (3) If the company is registered in Scotland, the following documents are exempt from stamp duty—
 - (a) every conveyance relating solely to property which forms part of the company's assets and which, after the execution of the conveyance, is or remains the company's property for the benefit of its creditors,
 - (b) any articles of roup or sale, submission and every other instrument and writing whatsoever relating solely to the company's property, and
 - (c) every deed or writing forming part of the proceedings in the winding up.

" Conveyance " here includes assignation, instrument, discharge, writing and deed.

191 Company's books to be evidence

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.

192 Information as to pending liquidations

- (1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies 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 fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

193 Unclaimed dividends (Scotland)

- (1) The following applies where a company registered in Scotland has been wound up, and is about to be dissolved.

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- (2) The liquidator shall lodge in an appropriate bank or institution as defined in section 73(1) of the Bankruptcy (Scotland) Act 1985 (not being a bank or institution in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts shall be transmitted to the Accountant of Court.
- (3) The provisions of section 58 of the Bankruptcy (Scotland) Act 1985 (so far as consistent with this Act and the Companies Act) apply with any necessary modifications to sums lodged in a bank or institution under this section as they apply to sums deposited under section 57 of the Act first mentioned.

194 Resolutions passed at adjourned meetings

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.

195 Meetings to ascertain wishes of creditors or contributories

- (1) The 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 Act or the articles.

196 Judicial notice of court documents

In all proceedings under this Part, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court shall take judicial notice—

- (a) of the signature of any officer of the High Court or of a county court in England and Wales, or of the Court of Session or a sheriff court in Scotland, or of the High Court in Northern Ireland, and also
- (b) of the official seal or stamp of the several offices of the High Court in England and Wales or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Act or the Companies Act, or any official copy of such a document.

197 Commission for receiving evidence

- (1) When a company is wound up in England and Wales or in Scotland, the court may refer the whole or any part of the examination of witnesses—
 - (a) to a specified county court in England and Wales, or

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- (b) to the sheriff principal for a specified sheriffdom in Scotland, or
 - (c) to the High Court in Northern Ireland or a specified Northern Ireland County Court,
(" specified " meaning specified in the order of the winding-up court).
- (2) Any person exercising jurisdiction as a judge of the court to which the reference is made (or, in Scotland, the sheriff principal to whom it is made) shall then, by virtue of this section, be a commissioner for the purpose of taking the evidence of those witnesses.
- (3) The judge or sheriff principal has in the matter referred the same power of summoning and examining witnesses, of requiring the production and delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.
- These powers are in addition to any which the judge or sheriff principal might lawfully exercise apart from this section.
- (4) The examination so taken shall be returned or reported to the court which made the order in such manner as that court requests.
- (5) This section extends to Northern Ireland.

198 Court order for examination of persons in Scotland

- (1) The court may direct the examination in Scotland of any person for the time being in Scotland (whether a contributory of the company or not), in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested by reason of his being a contributory.
- (2) The order or commission to take the examination shall be directed to the sheriff principal of the sheriffdom in which the person to be examined is residing or happens to be for the time; and the sheriff principal shall summon the person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.
- (3) The sheriff principal may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with the report the books and papers produced, if the originals are required and specified by the order or commission, or otherwise copies or extracts authenticated by the sheriff.
- (4) If a person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff principal shall proceed against him as a witness or haver duly cited; and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.
- (5) The sheriff principal is entitled to such fees, and the witness is entitled to such allowances, as sheriffs principal when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

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- (6) If any objection is stated to the sheriff principal by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff principal may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court

199 Costs of application for leave to proceed (Scottish companies)

Where a petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of the petition or application shall, unless the court otherwise directs, be added to the amount of the petitioner's or applicant's claim against the company.

200 Affidavits etc. in United Kingdom and overseas

- (1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in the United Kingdom, 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 dominions.
- (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.