



Companies Act 1947

1947 CHAPTER 47

PART V

WINDING UP.

90 Modification of grounds on which winding up order may be made.

If, on a winding up petition 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 court is of 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;

it shall make a winding up order, unless it 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.

91 Amendments as to preferential payments.

- (1) The maximum amount to which, under subsection (1) of section two hundred and sixty-four of the principal Act, priority is to be given—

- (a) to a debt for the wages or salary of a clerk or servant; or
- (b) to a debt for the wages of a workman or labourer; or
- (c) to any sum ordered under the Reinstatement in Civil Employment Act, 1944, to be paid by way of compensation;

shall be two hundred pounds (instead of being fifty pounds in the cases referred to in paragraphs (a) and (c) of this subsection or twenty-five pounds in the case referred to in paragraph (b) thereof).

- (2) The period within which services must have been rendered by a workman or labourer for his wages in respect thereof to have priority under the said subsection (1) shall

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be the same as in the case of a clerk or servant, that is to say, four months (instead of two months).

- (3) In section two hundred and ninety-eight of the principal Act (which modifies the said section two hundred and sixty-four in relation to companies within the stannaries), so much of paragraph (1) as reduces the said period of four months in the case of a clerk or servant to three months shall cease to have effect, and in paragraph (2) (which in the case of a miner, artizan or labourer substitutes for the maximum amount specified in the said section two hundred and sixty-four an amount equal to three months wages) for the reference to three months there shall be substituted a reference to four months.
- (4) For the purposes of the said sections two hundred and sixty-four and two hundred and ninety-eight any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.
- (5) The debts which are to be paid in priority under the said section two hundred and sixty-four shall include all accrued holiday remuneration becoming payable to a clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment with the company before or by the effect of the winding up order or resolution; and in relation to any sums payable in priority by virtue of this subsection, subsection (3) of the said section two hundred and sixty-four and paragraphs (3) and (5) of the said section two hundred and ninety-eight shall apply as they apply in relation to wages.
- (6) For the purposes of this section—
 - (a) the expression "accrued holiday remuneration" includes in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would in the ordinary course have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday; and
 - (b) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the National Insurance Act, 1946, or any enactment repealed by that Act as remuneration in respect of that period.
- (7) For the definition in subsection (7) of the said section two hundred and sixty-four of the expression "the relevant date" (that is to say the date by reference to which the debts payable in priority under that section are to be ascertained) there shall be substituted the following definition:—

“In this section the expression 'the relevant date'—

 - (a) in the case of a company ordered to be wound up compulsorily, means—
 - (i) the date of the appointment (or first appointment) of a provisional liquidator; or
 - (ii) if no such appointment was made, the date of the winding up order;

unless in either case the company had commenced to be wound Up voluntarily before that date; and
 - (b) in any case where the foregoing paragraph does not apply, means the date of the passing of the resolution for the winding up of the company.”

- (8) The amendments made by subsections (1) to (6) of this section shall have effect also for the purposes of section seventy-eight of the principal Act (which applies the said section two hundred and sixty-four where a receiver is appointed or possession is taken of any property by or on behalf of debenture holders) with the substitution in subsection (5) for the reference to the winding up order or resolution of a reference to the appointment of the receiver or possession being taken, by or on behalf of the debenture holders, of the company's property; but nothing in this section shall apply where the date referred to in subsection (7) of the said section two hundred and sixty-four (as originally enacted) or, in a case to which the said section seventy-eight applies, the corresponding date referred to in subsection (2) of that section, occurred before the coming into force of this section.

92 Amendments as to fraudulent preference.

- (1) Anything which, if made or done within three months before the commencement of a company's winding up, would be void under section two hundred and sixty-five of the principal Act as a fraudulent preference shall be void also if made or done after the coming into force of this section and within six months before the commencement of the winding

In the application of this provision to Scotland, for the reference to three months there shall be substituted a reference to sixty days.

- (2) Where, in the case of a company wound up in England, anything made or done after the coming into force of this section is void under the said section two hundred and sixty-five as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.
- (3) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.
- (4) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid. This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

93 Effect of floating charge.

- (1) In section two hundred and sixty-six of the principal Act (which invalidates, in whole or in part, certain floating charges created within six months before the commencement of a winding up) for the words " six months " there shall be substituted the words " twelve months ".

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- (2) This section shall not apply to a charge created more than six months before the coming into force thereof.

94 Amendments as to declaration of solvency in voluntary winding up.

- (1) A statutory declaration under section two hundred and thirty of the principal Act by directors of a company proposed to be wound up voluntarily, that they have made a full inquiry into the affairs of the company and have formed the opinion that it will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the winding up, (which declaration is under that section required for the winding up to be a members' voluntary winding up instead of a creditors' voluntary winding up within the meaning of that Act) shall have no effect for the purposes of that Act unless—

- (a) it is made within the five weeks immediately preceding the passing of the resolution for winding up the company; 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;

but the meeting of directors at which the said declaration is made need not be held, as required by subsection (1) of that section, before the date on which the notices of the meeting at which the said resolution is to be proposed are sent out, and for the reference to the said date in subsection (2) of that section (which requires the declaration to be registered before that date) there shall be substituted a reference to the date of the passing of the resolution.

- (2) Any director of a company making a declaration under the said section two hundred and thirty without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding five hundred pounds or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.
- (3) If, in a members' voluntary winding up, the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under the said section two hundred and thirty, he shall forthwith summon a meeting of the creditors and shall lay before the meeting a statement of the assets and liabilities of the company; and if the liquidator fails to comply with this subsection, he shall be liable to a fine not exceeding fifty pounds.
- (4) Where the last foregoing subsection applies, sections two hundred and forty-four and two hundred and forty-five of the principal Act (which respectively require annual meetings and a final meeting both of the company and of the creditors in a creditors' voluntary winding up) shall apply to the winding up instead of sections two hundred and thirty-five and two hundred and thirty-six of that Act (which in a members' voluntary winding up require corresponding meetings of the company only):

Provided that the liquidator shall not be required to summon a meeting of creditors under the said section two hundred and forty-four at the end of the first year from the commencement of the winding up, unless the meeting held under the last foregoing subsection is held more than three months before the end of that year.

- (5) Nothing in this section shall apply in relation to a winding up commenced before the coming into force thereof.

95 Miscellaneous amendments as to meetings in winding up.

- (1) The power of the liquidator under the said sections two hundred and thirty-five and two hundred and forty-four to call the yearly meeting of the company or of the creditors as soon as may be convenient after the end of the year in question shall be subject to the proviso that, unless the Board of Trade otherwise allow, the meeting shall be summoned for a date within three months after the end of that year.
- (2) If the liquidator fails to summon a final meeting of the company or of the creditors as required by the said section two hundred and thirty-six or the said section two hundred and forty-five, he shall be liable to a fine not exceeding fifty pounds.
- (3) The duty of the liquidator under subsection (7) of section one hundred and ninety-nine of the principal Act in a compulsory winding up, and under that subsection as applied by subsection (2) of section two hundred and forty of that Act in a creditors' voluntary winding up, on a vacancy occurring in the committee of inspection forthwith to summon a meeting of creditors or of contributories to fill the vacancy shall be subject to the proviso that, if the liquidator, having regard to the position in the winding up, is of opinion that it is unnecessary for the vacancy to be filled, he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.
- (4) A meeting of the creditors shall, where there is no committee of inspection, have the same power—
- (a) in a creditors' voluntary winding up, under paragraph (a) of subsection (1) of section two hundred and forty-eight of the principal Act; and
 - (b) in a winding up subject to the supervision of the court, under the proviso to subsection (1) of section two hundred and sixty thereof;

as a committee of inspection would have to sanction the exercise by the liquidator of the powers given to a liquidator in a winding up by the court by paragraphs (d), (e) and (f) of subsection (1) of section one hundred and ninety-one of that Act (which paragraphs relate respectively to the payment of any classes of creditors in full, to the making of compromises with creditors and to the making of compromises with contributories and debtors).

96 Miscellaneous amendments as to proceedings in or in connection with winding up.

- (1) Section one hundred and sixty-four of the principal Act (which makes provision as to the judge or judges by whom the winding-up jurisdiction of the High Court is to be exercised) shall cease to have effect, and the provisions of Part III of the Supreme Court of Judicature (Consolidation) Act, 1925 (which relates among other things to the distribution of business in the High Court) shall apply accordingly in relation to the jurisdiction to wind up companies in England under the principal Act.
- (2) Where, in the case of a private company, default is made in complying with the provisions required to be included in its articles in order to constitute it a private company, the provisions of the principal Act which by virtue of subsection (3) of section twenty-seven thereof are to apply to the company as if it were not a private company shall include paragraph (i) of proviso (a) to subsection (1) of section one

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hundred and seventy thereof (which enables a contributory to present a winding-up petition where the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven).

- (3) In subsection (1) of section two hundred and twenty-one of the principal Act (which provides that where the affairs of a company have been completely wound up the court shall make an order for its dissolution) after the words " the court " there shall be inserted the words " if the liquidator makes an application in that behalf ".
- (4) The rights conferred by sections two hundred and sixty-eight and two hundred and sixty-nine of the principal Act on the liquidator of a company being wound up in England in relation to executions against the goods or other property of the company and attachments of debts due to the company may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

97 Miscellaneous amendments as to information relating to windings up.

- (1) On the making of any order staying the proceedings in a winding up, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute thereof in his books relating to the company.
- (2) In subsection (2) of section two hundred and twenty-one of the principal Act (which requires an order dissolving a company on completion of a compulsory winding up to be reported by the liquidator to the registrar of companies) for the words " The order shall within fourteen days from the date thereof be reported " there shall be substituted the words " A copy of the order shall within fourteen days from the date thereof be forwarded ".
- (3) Section two hundred and twenty-six of the principal Act (which requires a company to give notice in the Gazette of the passing of a resolution for voluntary winding up within seven days after the passing thereof) shall have effect with the substitution for the words " seven days " of the words " fourteen days "; and section two hundred and fifty of the principal Act (which requires notice to the registrar of a liquidator's appointment in a voluntary winding up) shall have effect—
 - (a) with the substitution for the words " twenty-one days " of the words " fourteen days "; and
 - (b) with the insertion immediately before the words " deliver to the registrar " of the words " publish in the Gazette and ".
- (4) Any person shall be entitled, but only on payment of the prescribed fee, to inspect the copies filed under subsection (4) of section one hundred and ninety-five of the principal Act by the Board of Trade and the court of the audited accounts of a liquidator in a compulsory winding up in England, and accordingly the said subsection (4) shall be amended by the substitution for the words " the, inspection of any creditor or any person interested " of the words " the inspection of any person on payment of the prescribed fee."
- (5) The duty under subsection (5) of the said section one hundred and ninety-five to print and circulate copies of the liquidator's accounts or a summary thereof shall be that of the liquidator, instead of the Board of Trade, but compliance with that subsection may in any case be dispensed with by the Board.
- (6) Section three hundred and fourteen of the principal Act (which relates to the inspection of documents kept by the registrar of companies) shall apply to the statements by a

liquidator required by section two hundred and eighty-four of that Act, and so much of the said section two hundred and eighty-four as relates to the inspection of statements sent thereunder or the receipt of copies or extracts thereof shall cease to have effect.

- (7) Nothing in section two hundred and twelve of the principal Act (which provides in a compulsory winding up for the inspection of the company's books and papers by creditors and contributories in accordance with an order of the court under that section, but not further or otherwise) shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

98 Unclaimed assets while liquidation proceeding.

For the purposes of section two hundred and eighty-five of the principal Act (which relates to the disposal of unclaimed or undistributed assets of a company which is being wound up in England) any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company shall be included in the expression " money representing unclaimed or undistributed assets of the company."

99 Liability for rentcharge on company's land after dissolution or disclaimer.

- (1) Where by operation of law land in England vests subject to a rentcharge in the Crown or any other person either—
- (a) on the dissolution of a company; or
 - (b) on a disclaimer under section two hundred and sixty-seven of the principal Act;
- that shall not, subject to the next following subsection, impose on the Crown or the said other person or its or his successors in title any personal liability in respect of the rentcharge.
- (2) This section shall not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the said other person, has taken possession or control of the land or has entered into occupation thereof.
- (3) This section shall apply to land vesting and sums accruing due before, as well as after, the coming into force thereof.
- (4) In this section the expression " company " includes any body corporate.

100 Property of dissolved company.

- (1) Where on the dissolution of a company any property vests in the Crown as bona vacantia under section two hundred and ninety-six of the principal Act, the Crown's title thereto under that section may be disclaimed by a notice signed by the Treasury Solicitor.
- (2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Crown under the said section two hundred and ninety-six on the dissolution of the company, and subsections (2) and (6) of section two hundred and sixty-seven of the principal Act and the last foregoing section of this Act shall apply in relation to the property as if it had been disclaimed under subsection (1) of that section immediately before the dissolution.

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- (3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.
- (4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Treasury Solicitor, or, if an application in writing is made to the Treasury Solicitor by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have had jurisdiction to wind up the company if it had not been dissolved.
- (5) A statement in a notice of disclaimer of any property under this section that the vesting of the property came to the notice of the Treasury Solicitor on a specified date or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.
- (6) A notice of disclaimer under this section shall be delivered to the registrar of companies and retained and registered by him, and copies thereof shall be published in the Gazette and sent to any persons who have given the Treasury Solicitor notice that they claim to be interested in the property.
- (7) This section shall apply to property vested in the Crown as aforesaid at the coming into force of this section, and where the vesting came to the notice of the Treasury Solicitor more than six months before the coming into force thereof notice of disclaimer under this section may (except where an application is made to him under subsection (4) of this section) be executed at any time within six months thereafter.
- (8) This section shall apply to property vested in the Duchy of Lancaster or the Duke of Cornwall under the said section two hundred and ninety-six as if for references to the Crown and to the Treasury Solicitor there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to the Duchy of Lancaster or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.
- (9) This section shall apply to property in Scotland as if for references to the Treasury Solicitor there were substituted references to the King's and Lord Treasurer's Remembrancer, and as if section two hundred and sixty-seven of the principal Act applied in the case of a winding-up in Scotland, with the substitution, however, for references to property of a leasehold nature, to an under-lessee, and to a mortgagee by demise or a chargee by way of legal mortgage, of references respectively to property held under a lease, to a sub-lessee, and to the creditor in a security constituted by the assignation of a lease recorded under the Registration of Leases (Scotland) Act, 1857.

101 Miscellaneous amendments as to civil and criminal liability.

- (1) In any case in which a company's business is carried on in such a manner as to make the directors liable under section two hundred and seventy-five of the principal Act (which relates to the responsibility of directors for fraudulent trading) any other person who is knowingly a party to the carrying on of the business in that manner shall be similarly liable, both civilly under subsection (1) and criminally under subsection (3) of that section, and accordingly that section shall have effect with the substitution—
 - (a) in subsection (1) thereof for the words " any of the directors, whether past or present, of the company " of the words " any persons ";

- (b) in subsection (2) thereof for the word " director " where it first occurs of the word " person ", for the words " the director, company or person " of the words " the person liable or any company or person acting on his behalf " and for the word " director " where it last occurs of the words " person liable "; and
 - (c) in subsection (3) thereof for the words " director of the company " of the word " person ".
- (2) A person convicted under subsection (3) of the said section two hundred and seventy-five shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both (instead of being liable only to imprisonment for a term not exceeding one year).
- (3) Subsection (1) of section two hundred and seventy-four of the principal Act (which penalises the persons responsible where proper books of account were not kept by a company throughout the two years immediately preceding the commencement of its winding up) shall have effect and be deemed always to have had effect as if after the words " the period of two years immediately preceding the commencement of the winding up " there were inserted the words " or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter " and as if, in the phrase " unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable " for the word " or " there were substituted the word " and ".
- (4) So much of section two hundred and seventy-seven of the principal Act (which deals with the prosecution of officers and members of a company for offences discovered on a winding up) as—
 - (a) relates to prosecutions by the liquidator (except as respects prosecutions instituted or ordered by the court to be instituted before the coming into force of this section); or
 - (b) requires the Director of Public Prosecutions or the Lord Advocate, before instituting a prosecution, to form the opinion that the proceedings ought to be conducted by him; or
 - (c) requires the Director, if he forms the opinion that the case is not one in which proceedings ought to be taken by him, to inform the liquidator;shall cease to have effect.
- (5) Any 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 liable to a fine not exceeding one hundred pounds.