



Companies Act 1985

1985 CHAPTER 6

PART XX

WINDING UP OF COMPANIES REGISTERED UNDER THIS ACT OR THE FORMER COMPANIES ACTS

CHAPTER II

WINDING UP BY THE COURT

General powers of court in case of winding up by the court

549 Power to stay or sist winding up

- (1) The 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 or sisted, make an order staying or sisting the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.
- (2) The court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.
- (3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

550 Settlement of list of contributories and application of assets

- (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where

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rectification is required in pursuance of this Act, and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

- (2) If it appears to the 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 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.

551 Delivery of property to liquidator

The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith (or within such time as the court directs) to the liquidator any money, property or books and papers in his hands to which the company is prima facie entitled.

552 Debts due from contributory to company

- (1) The 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 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 this Act
- (2) The 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 or manager 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, 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.

553 Power to make calls

- (1) The 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 costs, charges and 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 court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it

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554 Payment into bank of money due to company

- (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England (or any branch of it) to the account of the liquidator instead of to the liquidator, and any such 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 the Bank of England (or branch) in the event of a winding up by the court are subject in all respects to the orders of the court.

555 Order on contributory to be conclusive evidence

- (1) An order made by the 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, except proceedings in Scotland against the heritable estate of a deceased contributory; and in that case the order is only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

556 Appointment of special manager (England and Wales)

- (1) Where in proceedings in England and Wales the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the company's estate or business, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business other than himself, apply to the court.
- (2) The court may on the application appoint a special manager of the company's estate or business to act during such time as the court may direct, with such powers (including any of the powers of a receiver or manager) as may be entrusted to him by the court.
- (3) The special manager shall give such security and account in such manner as the Secretary of State directs, and shall receive such remuneration as may be fixed by the court.

557 Power to exclude creditors not proving in time

The 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.

558 Adjustment of rights of contributories

The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it

559 Inspection of books by creditors and contributories

- (1) The 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

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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 section excludes or restricts any statutory rights of a government department or person acting under the authority of a government department.

560 Costs of winding up may be made payable out of assets

The 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 costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just

561 Summoning of persons suspected of having company property, etc.

- (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.
- (2) The court may examine the officer or other person summoned on oath concerning those matters either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.
- (3) The court may require him to produce any books and papers in his custody or power relating to the company; but if he claims any lien on books or papers produced by him, the production is without prejudice to that lien, and the court has jurisdiction in the winding up to determine all questions relating to that lien.
- (4) If a person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

562 Attendance at company meetings (Scotland)

In the winding up by the court of a company registered in Scotland, the court has power to require the attendance of any officer of the company at any meeting of creditors or of contributories, or of a committee of inspection, for the purpose of giving information as to the trade, dealings, affairs or property of the company.

563 Public examination of promoters and officers (England and Wales.)

- (1) Where an order has been made in England and Wales for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to it since its formation, the following applies.
- (2) The court may, after consideration of the report, direct (hat that person or officer shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation of the company, or the conduct of its business, or as to the conduct or dealings of that person as an officer of it.

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- (3) The official receiver shall take part in the examination and for that purpose may, if specially authorised by the Secretary of State in that behalf, employ a solicitor with or without counsel.
- (4) The liquidator (where the official receiver is not the liquidator) and any creditor or contributory may also take part in the examination either personally or by solicitor or counsel.

564 Procedure under s. 563

- (1) On a public examination ordered by the court under section 563, the court may put such questions to the person examined as it thinks fit.
- (2) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.
- (3) The person shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who is at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.
- (4) If the person applies to the court to be exculpated from any charges made or suggested against him, it is the duty of the official receiver to appear on the bearing of the application and call the court's attention to any matters which appear to him to be relevant; and if the court, after hearing evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it thinks fit.
- (5) Notes of a person's public examination shall be taken down in writing, and shall be read over to or by, and signed by, him and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.
- (6) The court may, if it thinks fit, adjourn the examination from time to time.
- (7) The examination may, if the court so directs (and subject to general rules) be held before any Circuit judge, or before any officer of the Supreme Court being an official referee, master or registrar in bankruptcy, or before a district registrar of the High Court named for the purpose by the Lord Chancellor; and the powers of the court under this section may be exercised by the person before whom the examination is held.

565 Power to arrest absconding contributory

The 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 or of avoiding examination respecting the company's affairs, 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.

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566 Powers of court to be cumulative

Powers conferred by this Act on the court are in addition to and not in restriction of any existing powers of instituting proceedings against a contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

567 Delegation of powers to liquidator (England and Wales)

- (1) Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England and Wales by this Act 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 court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the committee of inspection.

568 Dissolution of company

- (1) When the company's affairs have been completely wound up, the court (if the liquidator makes an application in that behalf) shall make an order that the company be dissolved from the date of the order, and the company is then dissolved accordingly.
- (2) A copy of the order shall within 14 days from its date be forwarded by the liquidator to the registrar of companies who shall record the company's dissolution.
- (3) If the liquidator makes default in complying with the requirements of subsection (2), he is liable to a fine and, for continued contravention, to a daily default fine.