Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER VI

WINDING UP

Voluntary winding Up

83   Effect of insolvency on members' voluntary winding up

(1) This section applies where, in the case of a members' voluntary winding up, the
liquidator is of the opinion that the company will be unable to pay its debts in full
(together with interest at the rate applicable under section 93 below) within the period
stated in the directors' declaration under section 577 of the 1985 Act

(2) The liquidator shall—

    (a)   summon a meeting of creditors for a day not later than the twenty-eighth day
after the day on which he formed the opinion mentioned in subsection (1)
above ;

    (b)   send notices of the creditors' meeting to the creditors by post not less than
seven days before the day on which that meeting is to be held;

    (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; and

    (d)   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;

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and the notice of the creditors' meeting shall state the duty imposed by paragraph (d) above.

(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's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duty imposed by subsection (2)(c) above shall apply separately in relation to each of those localities.

(6) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (5) above to the company's principal place of business in Great Britain shall be construed as references to the company's registered office.

(7) As from the day on which the creditors' meeting is held, this Part and the 1985 Act shall have effect as if—
    (a) the directors' declaration under section 577 of that Act 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 section 85 below;

and, accordingly, the winding up shall become a creditors' voluntary winding up and any appointment made or committee established by the creditors' meeting shall be deemed to have been made or established by the creditors' meeting so mentioned.

(8) Where the creditors' meeting is held three months or less before the end of the first year from the commencement of the winding up, nothing in section 594 of the 1985 Act (as applied by subsection (7) above) shall require the liquidator to summon a meeting of creditors at the end of that year.

(9) In this section " the relevant period " means the period of six 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.

(10) If the liquidator without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding the statutory maximum.