



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV **U.K.**

#### WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

### CHAPTER V **E+W+S**

#### PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

#### **107 Distribution of company's property. **E+W+S****

Subject to the provisions of this Act as to preferential payments, the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the articles otherwise provide) be distributed among the members according to their rights and interests in the company.

#### **Modifications etc. (not altering text)**

- C14** S. 107 restricted (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), reg. 46, [Sch. para. 2\(2\)](#)
- C15** S. 107 modified (E.W.) (31.1.2019) by [The Further Education Bodies \(Insolvency\) Regulations 2019 \(S.I. 2019/138\)](#), regs. 1(1), **15** (with regs. 1(2), 3(a)(ii))

#### **108 Appointment or removal of liquidator by the court. **E+W+S****

- (1) If from any cause whatever there is not liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another.

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## 109 Notice by liquidator of his appointment. **E+W+S**

- (1) The liquidator shall, within 14 days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by statutory instrument made by the Secretary of State.
- (2) If the liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

### Modifications etc. (not altering text)

- C16** S. 109 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)
- C17** [Ss. 109-111](#) applied (with modifications) (4.1.2024) by [S.I. 2021/716, Sch. 1 para. 3](#) (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), **20**)
- C18** S. 109(1) amended (1.7.1999) by [1998 c. 46, s. 125, Sch. 8 para. 23\(4\)\(5\)](#) (with s. 126(3)-(11)); [S.I. 1998/3178, arts. 2, 3](#) (as amended (28.6.2016) by [The Building Societies \(Floating Charges and Other Provisions\) Order 2016 \(S.I. 2016/679\)](#), arts. 1(1), **6**)

## 110 Acceptance of shares, etc., as consideration for sale of company property. **E+W**

- (1) This section applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business or property is proposed to be transferred or sold
  - [<sup>F1</sup>(a)] to another company ("the transferee company"), whether or not the latter is a [<sup>F2</sup>company registered under the Companies Act 2006][<sup>F1</sup>, or
  - (b) to a limited liability partnership (the "transferee limited liability partnership").]
- (2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up ("the transferor company") may receive, in compensation or part compensation for the transfer or [<sup>F3</sup>sale—
  - (a) in the case of the transferee company, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or
  - (b) in the case of the transferee limited liability partnership, membership in the transferee limited liability partnership for distribution among the members of the transferor company.]
- (3) The sanction requisite under subsection (2) is—
  - (a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and
  - (b) in the case of a creditors' voluntary winding up, that of either the court or the liquidation committee.
- (4) Alternatively to subsection (2), the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor [<sup>F4</sup>company may—
  - (a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the transferee company, or

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- (b) in the case of the transferee limited liability partnership, in lieu of receiving cash or membership (or in addition thereto), participate in some other way in the profits of, or receive any other benefit from, the transferee limited liability partnership.]
- (5) A sale or arrangement in pursuance of this section is binding on members of the transferor company.
- (6) A special resolution is not invalid for purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by the court, the special resolution is not valid unless sanctioned by the court.

#### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F1** Words in s. 110(1) inserted (6.4.2001) by [S.I. 2001/1090, reg. 9, Sch. 5 para. 15\(2\)](#)
- F2** Words in s. 110(1)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 75(11)} (with art. 10, Sch. 1 para. 84)
- F3** Word in s. 110(2) substituted (6.4.2001) by [S.I. 2001/1090, reg. 9, Sch. 5 para. 15\(3\)](#)
- F4** Words in s. 110(4) substituted (6.4.2001) by [S.I. 2001/1090, reg. 9, Sch. 5 para. 15\(4\)](#)

#### Modifications etc. (not altering text)

- C17** [Ss. 109-111](#) applied (with modifications) (4.1.2024) by [S.I. 2021/716, Sch. 1 para. 3](#) (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), [regs. 1\(2\), 20](#))

## 110 Acceptance of shares, etc., as consideration for sale of company property. **S**

- (1) This section applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business or property is proposed to be transferred or sold
- [<sup>F8</sup>(a)] to another company ("the transferee company"), whether or not the latter is a [<sup>F9</sup>company registered under the Companies Act 2006][<sup>F8</sup>, or
- (b) to a limited liability partnership (the "transferee limited liability partnership").]
- (2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up ("the transferor company") may receive, in compensation or part compensation for the transfer or [<sup>F10</sup>sale—
- (a) in the case of the transferee company, shares, policies or other like interests in the company for distribution among the members of the transferor company, or
- (b) in the case of the transferee limited liability partnership, membership in the limited liability partnership for distribution among the members of the transferor company.]
- (3) The sanction requisite under subsection (2) is—

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- (a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and
  - (b) in the case of a creditors' voluntary winding up, that of either the court or the liquidation committee.
- (4) Alternatively to subsection (2), the liquidator <sup>F11</sup>may-
- (a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the company, or
  - (b) in the case of the transferee limited liability partnership, in lieu of receiving cash, or membership (or in addition thereto) participate in some other way in the profits of, or receive any other benefit from, the limited liability partnership.]
- (5) A sale or arrangement in pursuance of this section is binding on members of the transferor company.
- (6) A special resolution is not invalid for purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by the court, the special resolution is not valid unless sanctioned by the court.

#### Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F8** Words in s. 110(1) inserted (6.4.2001) by [S.S.I. 2001/128, reg. 5, Sch. 4 para. 1\(2\)](#)
- F9** Words in s. 110(1)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 75(11)} (with art. 10, Sch. 1 para. 84)
- F10** Words in s. 110(2) substituted (6.4.2001) by [S.S.I. 2001/128, reg. 5, Sch. 4 para. 1\(3\)](#)
- F11** Words in s. 110(4) substituted (6.4.2001) by [S.S.I. 2001/128, reg. 5, Sch. 4 para. 1\(4\)](#)

#### Modifications etc. (not altering text)

- C17** [Ss. 109-111](#) applied (with modifications) (4.1.2024) by [S.I. 2021/716, Sch. 1 para. 3](#) (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\), regs. 1\(2\), 20](#))
- C27** [S. 110](#) applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
[S. 110](#) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\), Sch. 3](#)

## 111 Dissent from arrangement under s. 110. **E+W+S**

- (1) This section applies in the case of a voluntary winding up where, for the purposes of section 110(2) or (4), there has been passed a special resolution of the transferor company providing the sanction requisite for the liquidator under that section.
- (2) If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing, addressed to the liquidator and left at the company's registered office within 7 days after the passing of the resolution,

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he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under this section.

- (3) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.
- (4) For purposes of an arbitration under this section, the provisions of the <sup>M1</sup>Companies Clauses Consolidation Act 1845 or, in the case of a winding up in Scotland, the <sup>M2</sup>Companies Clauses Consolidation (Scotland) Act 1845 with respect to the settlement of disputes by arbitration are incorporated with this Act, and—
  - (a) in the construction of those provisions this Act is deemed the special Act and “the company” means the transferor company, and
  - (b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any two or more of them).

**Modifications etc. (not altering text)**

**C17** Ss. 109-111 applied (with modifications) (4.1.2024) by S.I. 2021/716, Sch. 1 para. 3 (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), **20**)

**C19** S. 111 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**  
S. 111 modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(2), **Sch. 3**

**Marginal Citations**

**M1** 1845 c. 16.

**M2** 1845 c. 17.

**112 Reference of questions to court. E+W+S**

- (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.
- (2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.
- (3) A copy of an order made by virtue of this section staying the proceedings in the winding up 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.

**Modifications etc. (not altering text)**

**C20** S. 112 amended (1.12.2001) by [2000 c. 8, s. 365\(2\)](#); [S.I. 2001/3538](#), art. 2(1)  
S. 112 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**

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- C21** S. 112 applied (with modifications) (4.1.2024) by S.I. 2021/716, Sch. 1 para. 3 (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), 20)
- C22** S. 112(3) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)** (with s. 126(3)-(11)); S.I. 1998/3178, **arts. 2, 3** (as amended (28.6.2016) by [The Building Societies \(Floating Charges and Other Provisions\) Order 2016 \(S.I. 2016/679\)](#), arts. 1(1), 6)

### 113 Court's power to control proceedings (Scotland). **E+W+S**

If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

#### Modifications etc. (not altering text)

- C23** S. 113 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**
- C24** **Ss. 113-115** applied (with modifications) (4.1.2024) by S.I. 2021/716, Sch. 1 para. 3 (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), 20)

### 114 No liquidator appointed or nominated by company. **E+W+S**

- (1) This section applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.
- (2) The powers of the directors shall not be exercised, except with the sanction of the court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with sections <sup>F5</sup>... 99 (statement of affairs) [<sup>F6</sup>and 100(1B) (nomination of liquidator by creditors)], during the period before the appointment or nomination of a liquidator of the company.
- (3) Subsection (2) does not apply in relation to the powers of the directors—
  - (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and
  - (b) to do all such other things as may be necessary for the protection of the company's assets.
- (4) If the directors of the company without reasonable excuse fail to comply with this section, they are liable to a fine.

#### Textual Amendments

- F5** Words in s. 114(2) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 9 para. 30(a)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)
- F6** Words in s. 114(2) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 9 para. 30(b)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

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**Modifications etc. (not altering text)**

- C24** Ss. 113-115 applied (with modifications) (4.1.2024) by S.I. 2021/716, Sch. 1 para. 3 (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), **20**)
- C25** S. 114 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**

**115 Expenses of voluntary winding up. E+W+S**

[<sup>F7</sup>After the payment of any liabilities to which section 174A applies,] all expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

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**Textual Amendments**

- F7** Words in s. 115 inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 3 para. 9** (with ss. 2(2), 5(2))

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**Modifications etc. (not altering text)**

- C24** Ss. 113-115 applied (with modifications) (4.1.2024) by S.I. 2021/716, Sch. 1 para. 3 (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), **20**)
- C26** S. 115 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**

**116 Saving for certain rights. E+W+S**

The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the court; but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by [S.I. 2017/1119 Sch. 3 para. 1](#)
- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)