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Insolvency Act 1986

1986 CHAPTER 45

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

CHAPTER VI

WINDING UP BY THE COURT

Grounds and effect of winding-up petition

122 Circumstances in which company may be wound up by the court.

- (1) A company may be wound up by the court if—
 - (a) the company has by special resolution resolved that the company be wound up by the court,
 - (b) being a public company which was registered as such on its original incorporation, the company has not been issued with a certificate under section 117 of the Companies Act (public company share capital requirements) and more than a year has expired since it was so registered,
 - (c) it is an old public company, within the meaning of the Consequential Provisions Act,
 - (d) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
 - (e) [^{F1}except in the case of a private company limited by shares or by guarantee,]the number of members is reduced below 2,
 - (f) the company is unable to pay its debts,
 - (g) the court is of the opinion that it is just and equitable that the company should be wound up.
- (2) In Scotland, a company which the Court of Session has jurisdiction to wind up may be wound up by the Court if there is subsisting a floating charge over property comprised

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in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the Court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

Textual Amendments

F1 Words in s. 122(1)(e) inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para.8**

Modifications etc. (not altering text)

- C1** S. 122 applied (with modifications) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 6(a)**
C2 S. 122(1)(b) excluded (27.7.1999) by 1999 c. 20, ss. 2(5), 5(1), **Sch. 2 Pt. II para. 9(b)** (with s. 15)
C3 S. 122(1)(f) modified by S.I. 1989/1058, **reg. 18(2)**
 S. 122(1)(f) extended (1.4.1992) by S.I. 1992/613, **reg. 49(2)**
 S. 122(1)(f): power to modify conferred (E.W.) (6.3.1992) by 1992 c. 14, s. 14(3), **Sch. 4 para. 10(1)** (with s. 118(1)(2))

123 Definition of inability to pay debts.

- (1) A company is deemed unable to pay its debts—
- (a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
 - (b) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
 - (c) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
 - (d) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company, or
 - (e) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.
- (2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.
- (3) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by order under section 416 in Part XV.

Modifications etc. (not altering text)

- C4** S. 123 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 7(a)**
 S. 123 applied (1.10.1996) by 1996 c. 52, s. 7, **Sch. 1 Pt. II para. 14(2)**; S.I. 1996/2402, **art. 3** (subject to transitional provisions and savings in Sch.)

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C5 S. 123 applied (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 166\(3\), 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

124 Application for winding up.

- (1) Subject to the provisions of this section, an application to the court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories [^{F2}or by the clerk of a magistrates' court in the exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (enforcement of fines imposed on companies)], or by all or any of those parties, together or separately.
- (2) Except as mentioned below, a contributory is not entitled to present a winding-up petition unless either—
 - (a) the number of members is reduced below 2, or
 - (b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.
- (3) A person who is liable under section 76 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in section 122(1) (f) and (g), and subsection (2) above does not then apply; but unless the person is a contributory otherwise than under section 76, he may not in his character as contributory petition on any other ground.

This subsection is deemed included in Chapter VII of Part V of the Companies Act (redeemable shares; purchase by a company of its own shares) for the purposes of the Secretary of State's power to make regulations under section 179 of that Act.

- (4) A winding-up petition may be presented by the Secretary of State—
 - (a) if the ground of the petition is that in section 122(1)(b) or (c), or [^{F3}(b) in a case falling within section 124A below.]
- (5) Where a company is being wound up voluntarily in England and Wales, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section; but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

Textual Amendments

- F2** Words inserted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 62(2)(b), 123, [Sch. 8 para. 16](#)
- F3** S. 124(4)(b) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 60(2), 213(2)

Modifications etc. (not altering text)

- C6** S. 124 excluded (S.) (27.7.1992) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 19\)](#), ss. 14(3), 15(9); [S.I. 1992/1599, art. 5](#)
- C7** S. 124 extended (E.W.) by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 87A (as inserted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 62(1), 123, [Sch. 8 para. 16](#))

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C8 S. 124 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(1)(a), Sch. 4 Pt. II para. 8, **Sch. 6 para. 2**

[^{F4}124A Petition for winding up on grounds of public interest.

- (1) Where it appears to the Secretary of State from—
- (a) any report made or information obtained under Part XIV of the ^{M1} Companies Act 1985 (company investigations, &c.),
 - (b) any report made under section 94 or 177 of the ^{M2} Financial Services Act 1986 or any information obtained under section 105 of that Act,
 - (c) any information obtained under section 2 of the ^{M3} Criminal Justice Act 1987 or section 52 of the ^{M4} Criminal Justice (Scotland) Act 1987 (fraud investigations), or
 - (d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),
- that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.
- (2) This section does not apply if the company is already being wound up by the court.]

Textual Amendments

F4 S. 124A inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 60(3), 213(2)**

Marginal Citations

M1 1985 c. 6(27).
M2 1986 c.60(69).
M3 1987 c.38(39:1).
M4 1987 c.41(39:1).

VALID FROM 08/10/2004

[^{F5}124B Petition for winding up of SE

- (“) Where—
- (a) an SE whose registered office is in Great Britain is not in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European company (the “EC Regulation”)(location of head office and registered office), and
 - (b) it appears to the Secretary of State that the SE should be wound up, he may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.
- (2) This section does not apply if the SE is already being wound up by the court.
- (3) In this section “SE” has the same meaning as in the EC Regulation.]

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Textual Amendments

- F5** S. 124B inserted (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), [reg. 73\(3\)](#)

VALID FROM 18/08/2006

[^{F6}124C Petition for winding up of SCE

- (1) Where, in the case of an SCE whose registered office is in Great Britain—
 - (a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE)(the “European Cooperative Society Regulation”)(winding up by the court or other competent authority), and
 - (b) it appears to the Financial Services Authority that the SCE should be wound up,the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.
- (2) Where, in the case of an SCE whose registered office is in Great Britain—
 - (a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office, and
 - (b) it appears to the Financial Service Authority that the SCE should be wound up,the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.
- (3) This section does not apply if the SCE is already being wound up by the court.
- (4) In this section “SCE” has the same meaning as in the European Cooperative Society Regulation.]

Textual Amendments

- F6** S. 124C inserted (18.8.2006) by [The European Cooperative Society Regulations 2006 \(S.I. 2006/2078\)](#), [reg. 33\(1\)](#)

125 Powers of court on hearing of petition.

- (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding-up order on the ground only that the company’s assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (2) If the petition is 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, if it is of opinion—

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- (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,

shall make a winding-up order; but this does not apply if the court 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.

Modifications etc. (not altering text)

- C9** S. 125 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 8\(3\)\(9\)](#), [Sch. 4 Pt. II para. 9](#)
 S. 125 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 10\(1\)\(a\)](#), [Sch. 6 para. 3](#)

126 Power to stay or restrain proceedings against company.

- (1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—
- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England and Wales or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein, and
 - (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;
- and the court to which the application is so made may (as the case may be) stay, sist or restrain the proceedings accordingly on such terms as it thinks fit.
- (2) In the case of a company registered under section 680 of the Companies Act (pre-1862 companies; companies formed under legislation other than the Companies Acts) or the previous corresponding legislation, where the application to stay, sist or restrain is by a creditor, this section extends to actions and proceedings against any contributory of the company.

Modifications etc. (not altering text)

- C10** S. 126 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\), ss. 154, 155, 161\(4\)](#); [S.I. 1991/878, art. 2, Sch.](#)
 S. 126 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)
C11 S. 126(2) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\)](#), [Sch. 3](#)

127 Avoidance of property dispositions, etc.

In a winding up by the court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void.

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Modifications etc. (not altering text)

- C12** S. 127 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 164(3), 175(4), 182(4), **Sch. 22 para. 11(4)**; S.I. 1991/878, art. 2, **Sch.**
S. 127 excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(4)-(8)**
- C13** S. 127 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 7(2)**; S.I. 1991/878, art. 2, **Sch.**
S. 127 excluded (11.12.1999) by S.I. 1999/2979, **reg. 16(3)**
S. 127 excluded (11.12.1999) by S.I. 1999/2979, **reg. 19(3)**
- C14** S. 127 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(1)**, **Sch. 2**
S. 127 modified (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(2)**, **Sch. 3**

128 Avoidance of attachments, etc.

- (1) Where a company registered in England and Wales is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void.
- (2) This section, so far as relates to any estate or effects of the company situated in England and Wales, applies in the case of a company registered in Scotland as it applies in the case of a company registered in England and Wales.

Modifications etc. (not altering text)

- C15** S. 128 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154, 155, 161(4)**; S.I. 1991/878, art. 2, **Sch.**
- C16** S. 128 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(1)**, **Sch. 2**
- C17** S. 128 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3**, **Sch. para. 2**

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