



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

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

### CHAPTER VII

#### LIQUIDATORS

##### *Liquidator's powers and duties*

#### **165 Voluntary winding up.**

- (1) This section has effect where a company is being wound up voluntarily, but subject to section 166 below in the case of a creditor's voluntary winding up.
- (2) The liquidator may—
  - (a) in the case of a members' voluntary winding up, with the sanction of an [<sup>F1</sup>special resolution] of the company, and
  - (b) in the case of a creditor's voluntary winding up, with the sanction of the court or the liquidation committee (or, if there is no such committee, a meeting of the company's creditors),

exercise any of the powers specified in Part I of Schedule 4 to this Act (payment of debts, compromise of claims, etc.).

- (3) The liquidator may, without sanction exercise either of the powers specified in Part II of that Schedule (institution and defence of proceedings; carrying on the business of the company) and any of the general powers specified in Part III of that Schedule.
- (4) The liquidator may—

*Status: Point in time view as at 01/10/2012.*

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- (a) exercise the court's power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),
  - (b) exercise the court's power of making calls,
  - (c) summon general meetings of the company for the purpose of obtaining its sanction by [<sup>F2</sup>special resolution] or for any other purpose he may think fit.
- (5) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.
- (6) Where the liquidator in exercise of the powers conferred on him by this Act disposes of any property of the company to a person who is connected with the company (within the meaning of section 249 in Part VII), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

#### Textual Amendments

- F1** Words in s. 165(2)(a) substituted (1.10.2007 with application as noted in Sch. 4 para. 41(2) of the amending S.I.) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), **Sch. 4 para. 41(1)(a)** (with art. 12)
- F2** Words in s. 165(4)(c) substituted (1.10.2007 with application as noted in Sch. 4 para. 41(2) of the amending S.I.) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), **Sch. 4 para. 41(1)(b)** (with art. 12)

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

- C1** S. 165 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**
- C2** S. 165 modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(2), **Sch. 3**

## 166 Creditors' voluntary winding up.

- (1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.
- [<sup>F3</sup>(1A) The exercise by the liquidator of the power specified in paragraph 6 of Schedule 4 to this Act (power to sell any of the company's property) shall not be challengeable on the ground of any prior inhibition.]
- (2) The powers conferred on the liquidator by section 165 shall not be exercised, except with the sanction of the court, during the period before the holding of the creditors' meeting under section 98 in Chapter IV.
- (3) Subsection (2) does not apply in relation to the power of the liquidator—
- (a) to take into his custody or under his control all the property to which the company is or appears to be entitled;
  - (b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
  - (c) to do all such other things as may be necessary for the protection of the company's assets.

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- (4) The liquidator shall attend the creditors' meeting held under section 98 and shall report to the meeting on any exercise by him of his powers (whether or not under this section or under section 112 or 165).
- (5) If default is made—
- (a) by the company in complying with subsection (1) [<sup>F4</sup>, (1A)] or (2) of section 98, or
  - (b) by the directors in complying with subsection (1) [<sup>F5</sup>, (2) or (2A)] of section 99,
- the liquidator shall, within 7 days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.
- (6) “The relevant day” means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.
- (7) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

#### Textual Amendments

- F3** S. 166(1A) inserted (S.) (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. [155\(3\)](#), [227\(3\)](#) (with s. [223](#)); S.S.I. 2009/67, [art. 3\(a\)](#) (with arts. [5](#), [6](#)); as amended by S.S.I. 2011/31, [art. 5](#)
- F4** Words in s. 166(5)(a) inserted (6.4.2009) by [The Legislative Reform \(Insolvency\) \(Advertising Requirements\) Order 2009 \(S.I. 2009/864\)](#), [art. 3\(3\)](#) (with art. [4](#))
- F5** Words in s. 166(5)(b) substituted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 5\(5\)](#)

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

- C3** S. 166 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. [4\(1\)](#), [Sch. 2](#)
- C4** S. 166(5) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. [4\(2\)](#), [Sch. 3](#)

## 167 Winding up by the court.

- (1) Where a company is being wound up by the court, the liquidator may—
- (a) with the sanction of the court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 4 to this Act (payment of debts; compromise of claims, etc., institution and defence of proceedings; carrying on of the business of the company), and
  - (b) with or without that sanction, exercise any of the general powers specified in Part III of that Schedule.
- (2) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Act—
- (a) disposes of any property of the company to a person who is connected with the company (within the meaning of section 249 in Part VII) or
  - (b) employs a solicitor to assist him in the carrying out of his functions,
- he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

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- (3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section is subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

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

- C5** S. 167 excluded (1.12.2001) by **2000 c. 8, s. 376(12)**; S.I. 2001/3538, **art. 2(1)**  
 S. 167 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(1), Sch. 2**
- C6** S. 167 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**

**168 Supplementary powers (England and Wales).**

- (1) This section applies in the case of a company which is being wound up by the court in England and Wales.
- (2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).
- (3) The liquidator may apply to the court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.
- (4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.
- (5) If any person is aggrieved by an act or decision of the liquidator, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just.
- [<sup>F6</sup>(5A) Where at any time after a winding-up petition has been presented to the court against any person (including an insolvent partnership or other body which may be wound up under Part V of the Act as an unregistered company), whether by virtue of the provisions of the <sup>M1</sup>Insolvent Partnerships Order 1994 or not, the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.
- (5B) Any order or directions under subsection (5A) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.]
- [<sup>F7</sup>(5C) Where the court makes an order for the winding up of an insolvent partnership under—
- (a) section 72(1)(a) of the Financial Services Act 1986;
  - (b) section 92(1)(a) of the Banking Act 1987; or
  - (c) section 367(3)(a) of the Financial Services and Markets Act 2000,

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the court may make an order as to the future conduct of the winding up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order 1994 with any necessary modifications.]

#### Textual Amendments

**F6** S. 168(5A)(5B)(5C) inserted (1.12.1994) by [S.I. 1994/2421](#), **art. 14(1)**

**F7** S. 168(5C) substituted (3.7.2002) by [S.I. 2002/1555](#), **art. 15(2)**

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

**C7** S. 168 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** (as amended (13.3.2018) by [S.I. 2018/208](#), **regs. 1(3)**, **5(3)**)

**C8** S. 168(1)-(3)(5) applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), **art. 8(3)(9)**, **Sch. 4 Pt. II para. 20**

**C9** S. 168(2) modified (20.4.2003) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2003 \(S.I. 2003/1102\)](#), **reg. 29(2)** (with **reg. 3**)

**C10** S. 168(4) applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, **Sch. para. 3**

#### Marginal Citations

**M1** [S.I. 1994/2421](#).

### 169 Supplementary powers (Scotland).

(1) In the case of a winding up in Scotland, the court may provide by order that the liquidator may, where there is no liquidation committee, exercise any of the following powers, namely—

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company, or
- (b) to carry on the business of the company so far as may be necessary for its beneficial winding up,

without the sanction or intervention of the court.

(2) In a winding up by the court in Scotland, the liquidator has (subject to the rules) the same powers as a trustee on a bankrupt estate.

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

**C11** S. 169 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), **reg. 4(1)**, **Sch. 2**

**C12** S. 169 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**

### 170 Enforcement of liquidator's duty to make returns, etc.

(1) If a liquidator who has made any default—

- (a) in filing, delivering or making any return, account or other document, or
- (b) in giving any notice which he is by law required to file, deliver, make or give,

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fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court has the following powers.

- (2) On an application made by any creditor or contributory of the company, or by the registrar of companies, the court may make an order directing the liquidator to make good the default within such time as may be specified in the order.
- (3) The court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.
- (4) Nothing in this section prejudices the operation of any enactment imposing penalties on a liquidator in respect of any such default as is mentioned above.

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

- C13** S. 170 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)
- C14** S. 170 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](#)
- C15** S. 170(2) amended (1.7.1999) by [1998 c. 46](#), [s. 125](#), [Sch. 8](#), [para. 23\(1\)-\(3\)](#) (with [s. 126\(3\)-\(11\)](#)); [S.I. 1998/3178](#), [arts. 2, 3](#)

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