



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

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

#### CHAPTER VIII

#### PROVISIONS OF GENERAL APPLICATION IN WINDING UP

#### *Disclaimer (England and Wales only)*

#### **178 Power to disclaim onerous property.**

- (1) This and the next two sections apply to a company that is being wound up in England and Wales.
- (2) Subject as follows, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.
- (3) The following is onerous property for the purposes of this section—
  - (a) any unprofitable contract, and
  - (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (4) A disclaimer under this section—
  - (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
  - (b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

*Status: Point in time view as at 25/04/2013.*

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- (5) A notice of disclaimer shall not be given under this section in respect of any property if—
- (a) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and
  - (b) the period of 28 days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.
- (6) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

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

- C1** S. 178 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), ss. 154, 155, 164(1), 182(4), [Sch. 22 para. 7\(1\)](#); S.I. 1991/878, art. 2, [Sch.](#)
- S. 178 excluded (11.12.1999) by S.I. 1999/2979, [reg. 16\(1\)](#)
- S. 178 excluded (26.12.2003) by [The Financial Collateral Arrangements \(No. 2\) Regulations 2003 \(S.I. 2003/3226\)](#), [reg. 10\(4\)](#)
- C2** S. 178 restricted (1.1.1996) by [1995 c. 30, s. 21\(2\)\(b\)](#) (with ss. 1(1), 2(2), 26(1)); S.I. 1995/2963, [art. 2](#)
- C3** S. 178 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](#)
- C4** S. 178 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](#)

**179 Disclaimer of leaseholds.**

- (1) The disclaimer under section 178 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—
- (a) no application under section 181 below is made with respect to that property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served; or
  - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 181, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

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

- C5** S. 179 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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**C6** S. 179 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**

## **180 Land subject to rentcharge.**

- (1) The following applies where, in consequence of the disclaimer under section 178 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection as “the proprietor”).
- (2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

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

- C7** S. 180 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**
- C8** S. 180 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**

## **181 Powers of court (general).**

- (1) This section and the next apply where the liquidator has disclaimed property under section 178.
- (2) An application under this section may be made to the court by—
  - (a) any person who claims an interest in the disclaimed property, or
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (3) Subject as follows, the court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—
  - (a) a person entitled to it or a trustee for such a person, or
  - (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person.
- (4) The court shall not make an order under subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The effect of any order under this section shall be taken into account in assessing for the purpose of section 178(6) the extent of any loss or damage sustained by any person in consequence of the disclaimer.
- (6) An order under this section vesting property in any person need not be completed by conveyance, assignment or transfer.

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

- C9** S. 181 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](#)
- C10** S. 181 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. 2](#)

**182 Powers of court (leaseholds).**

- (1) The court shall not make an order under section 181 vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—
- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or
  - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

- (2) For the purposes of an order under section 181 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.

- (3) Where subsection (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under section 181 on the terms required by virtue of that subsection, the court may, by order under that section, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.

The court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

- (4) Where subsection (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under section 181, that person is excluded from all interest in the property.

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

- C11** S. 182 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](#)
- C12** S. 182 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](#)

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