



Companies (Consolidation) Act 1908

1908 CHAPTER 69 8 Edw 7

PART VIII

WINDING UP OF UNREGISTERED COMPANIES.

268 Winding up of unregistered companies.

- (1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions :—
- (i) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate ; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business ; and the principal place of business situate in that part of the United Kingdom in which proceedings are being-instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company :
 - (ii) No unregistered company shall be wound up under this; Act voluntarily or subject to supervision :
 - (iii) The circumstances in which an unregistered company may be wound up are as follows (that is to say):—
 - (a) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;
 - (b) If the company is unable to pay its debts ;
 - (c) If the court is of opinion that it is just and equitable that the company should be wound up :
 - (iv) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts :—
 - (a) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding; fifty pounds then due, has served on the

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company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor ;

- (b) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal -place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or; by otherwise serving the same in such manner as the. court may approve or direct, the company has not . within ten days after service of the notice. paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by , him by reason of the same ;
- (c) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied ;
- (d) If in Scotland the induciæ 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 ;
- (e) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts :
- (v) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867.

Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 1873, and, as respects Ireland, under the authority of the Supreme Court of Judicature (Ireland) Act, 1877, the jurisdiction of the High Court in England or Ireland under this provision shall be exercised by the Chancery Division of that Court:

- (vi) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act, to present a petition for winding up a company :
- (vii) In the ease of a limited partnership the provisions of this Act with respect to winding up shall apply with, such modifications (if any) as may be provided by

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rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

- (2) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment' repealed by this Act, except that references in any such first-mentioned, enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.