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# COMPANIES BILL 2012

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*Unofficial version*

As amended in ~~Committee-Report~~ Stage (Seanad)  
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**Arthur Cox**

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## PART 11

### WINDING UP

#### Chapter 1

##### Preliminary and interpretation

###### **Interpretation (Part 11).**

[559]. (1) In this Part -

“connected person” means a person who, at the time the transaction in relation to the company concerned was carried out, was -

- (a) a director of the company;
- (b) a shadow director of the company;
- (c) a person connected, within the meaning of *section [220]*, with a director of the company;
- (d) a related company; or
- (e) any trustee of, or surety or guarantor for the debt due, to any person referred to in *paragraph (a), (b), (c) or (d)*;

“contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and *subsection (2)* supplements this definition;

“creditors’ voluntary winding up” means a voluntary winding up in the circumstances specified in *section [562](1)(b)*;

“members’ voluntary winding up” means a voluntary winding up in the circumstances specified in *section [562](1)(a) or (2)*;

“property” means all real and personal property, and includes any right of action by the company or liquidator under the provisions of this Act or any other enactment;

“provisional liquidator” means a liquidator appointed provisionally under *section [573]* and *subsections (3) to (5)* contain provisions as to the construction of references in this Part to liquidator so far as concerns the immediate expression;

“winding-up petition” means a petition presented under this Act to wind up a company.

(2) For the purposes of –

- (a) all proceedings for determining; and
- (b) all proceedings prior to the final determination of,

the issue as to whether a particular person is a contributory for the purposes of this Part, “contributory” in this Part includes any person alleged to be a contributory.

(3) *Subsections (4) and (5)* apply save where the terms of the provision concerned make express reference to a provisional liquidator or otherwise provide for the construction of the expression “provisional liquidator”.

(4) Where a provision of this Part is capable of being applied in the period before the making of a winding-up order (including a provision that makes provision by reference to anything that has happened in such period), then “liquidator” in that provision, to the extent that it is capable of such application or makes such provision, includes a provisional liquidator.

(5) Where the court confers any power on a provisional liquidator and the power conferred corresponds to any power express provision for which is made by a provision of this Part then, to the extent that that latter provision is capable of being applied in the period before the making of a winding-up order, “liquidator” in that provision includes a provisional liquidator.

#### **Restriction of this Part.**

[560]. This Part is subject to Chapters I (general provisions) and III (secondary insolvency proceedings) of the Insolvency Regulation.

#### **Modes of winding up – general statement as to position under Act.**

[561]. The winding up of a company may be:

- (a) by the court; or
- (b) voluntary.

#### **Types of voluntary winding up – general statement as to position under Act.**

[562]. (1) The voluntary winding up of a company -

- (a) may, in accordance with the Summary Approval Procedure or (where *section [579](3)* permits) in accordance with *section [580]*, be a members’ voluntary winding up unless -
  - (i) there is default in the making of a declaration referred to in *section [207]* or *[580](2)* in accordance with the relevant provisions of this Act; or
  - (ii) the court makes an order under *section [582](2)* in relation to the company; or

(iii) a creditors' meeting is held in accordance with *section [584]* in relation to the company,

(each of which is referred to in *paragraph (b)* as a "bar to a members' winding up") ;

or

(b) shall, where there is a bar to a members' winding up or the procedure under *section [586](2)* is employed, be a creditors' voluntary winding up.

(2) *Subsection (1)(a)* is in addition to the jurisdiction of the court under *section [572](4)* to order that a company be wound up as a members' voluntary winding up.

(3) Nothing in *subsection (1)* shall be read as affecting the operation of –

(a) in the case of the Summary Approval Procedure being employed for the purpose – *section [201](3)*; or

(b) in the case of *section [580]* being employed for the purpose – *section [580](6)*.

**Provisions apply to either mode of winding up unless the contrary appears.**

[563]. The provisions of this Part relating to winding up apply, unless the contrary appears, to the winding up of a company in either of the modes mentioned in *section [561]*.

**Jurisdiction to wind up companies and rules of court.**

[564]. (1) The court shall have jurisdiction to wind up a company.

(2) In *subsections (3) to (6)* the "rule making authority" means the powers under section 36 of the Courts of Justice Act 1924 and section 68 of the Courts of Justice Act 1936, and all the other powers of that Committee in that behalf, of the Superior Courts Rules Committee to make rules regulating the practice and procedure of the court.

(3) The extension of the rule making authority made by section 312 of the Act of 1963 shall continue in being.

(4) As soon as may be after the passing of this Act, the rule making authority shall be exercised so as to secure that the rules of court in force before such passing in relation to windings up are altered in a manner that brings them into conformity with this Part.

(5) In particular the rule making authority shall be so exercised so as to remove those of the functions of the court officer known as "the Examiner" as are stated in those rules to be performable for the purposes of a winding up.

(6) *Subsections (4) and (5)* are without prejudice to the exercise generally of the rule making authority on and from the passing

of this Act, whether for any purpose of this Act or any other purpose.

**Powers of court cumulative.**

[565]. Any powers conferred on the court by this Act are in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor, for the recovery of any call or other sums.

**Court may have regard to wishes of creditors or contributories.**

[566]. (1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence.

(2) For the purpose of ascertaining those wishes, the court may, if it thinks fit -

(a) direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs; and

(b) appoint a person to act as chairperson of any such meeting and report the result of the meeting to the court.

(3) In the case of creditors, regard shall be had to the value of each creditor's debt.

(4) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the constitution of the company.

**Application of certain provisions to companies not in liquidation.**

[567]. (1) This section applies in relation to a company that is not being wound up where -

(a) 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

(b) it is proved to the satisfaction of the court that the company is unable to pay its debts, taking into account the contingent and prospective liabilities of the company,

and, in either case, it appears to the court that the reason or the principal reason for its not being wound up is the insufficiency of its assets.

(2) The sections specified in the Table to this section apply, with the necessary modifications, to a company to which this

section applies, notwithstanding that it is not being wound up; accordingly, a person who would have standing otherwise to apply for an order or judgment under a section so specified shall have such standing to make an application under that section as so applied, but this does not affect the Director's power under *subsection (3)*.

(3) The Director may apply to the court pursuant to this subsection for an order or judgment, as the case may be, under any of the sections which apply to a company to which this section applies.

(4) References in the sections specified in the Table to this section to -

- (a) the commencement of the winding up of a company;
- (b) the appointment of a provisional liquidator;
- (c) the making of a winding-up order; or
- (d) the relevant date,

shall, for the purposes of this section, be read as references to the date -

- (i) of the judgment, decree or order mentioned in *subsection (1)(a)*; or
- (ii) on which the court determines that the company is unable to pay its debts.

(5) Where, by virtue of this section, proceedings are instituted under *section [599], [608], [609], [610], [612] or [662], sections [610](6) and [611]* shall apply in relation to any order made as a result of those proceedings except that an order made as a result of an application by the Director pursuant to *subsection (3)* shall not be made in favour of the Director, otherwise than as to his or her costs and expenses.

(6) Subject to *subsection (7)*, a person having a claim against the company may apply to the court for such order as is appropriate by way of enforcement of any right the court on the application finds to arise on the person's part to payment of a share of any sums or assets recovered or available following a successful application by the Director pursuant to *subsection (3)*, and, on the hearing of an application under this subsection, the court may make such an order accordingly.

(7) An application under *subsection (6)* shall be made within a period of 30 days after the date of judgment or order given on behalf or in favour of the Director pursuant to *subsection (3)*.

(8) Where *section [721]* applies by virtue of this section, it shall so apply as if the words "which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up" were deleted from it.

<b>TABLE</b>
<b>Sections to which this section applies</b>

Section	Subject
<i>Section [286](3)</i>	Particular case of category 1 offence arising where adequate accounting records not kept, etc
<i>Section [599]</i>	Related company may be required to contribute to debts of company being wound up
<i>Section [608]</i>	Power of court to order return of assets which have been improperly transferred
<i>Section [609]</i>	Personal liability of officers of company where adequate accounting records not kept
<i>Sections [610] and [611]</i>	Civil liability for fraudulent trading
<i>Section [612]</i>	Power of court to assess damages against certain persons
<i>Section [613]</i>	Directors of holding company: power of court to assess damages against them
<i>Section [671]</i>	Power of court to summon persons for examination
<i>Section [672]</i>	Order for payment or delivery of property against person examined under <i>section [660]</i>
<i>Section [675]</i>	Order for arrest and seizure, etc.
<i>Section [684]</i>	Inspection of books by creditors and contributories
<i>Section [721]</i>	Other frauds by officers of companies which have gone into liquidation: offence
<i>Section [722]</i>	Fraudulent trading of company: offence
<i>Section [751]</i>	Order for inspection of books or documents of company in liquidation
<i>Section [818]</i>	Interpretation and application ( <i>Chapter 3 of Part 14</i> )

## Chapter 2

### Winding up by court

#### Application of Chapter.

[568]. Save to the extent that the provision expressly provides otherwise, each provision of this Chapter applies only to a winding up that is ordered by the court.

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

[569]. (1) A company may be wound up by the court -

- (a) if the company has by special resolution resolved that the company be wound up by the court;

- (b) if the company does not commence its business within a year after the date of its incorporation or suspends its business for a continuous period of 12 months;
- (c) if the members of the company are all deceased or no longer exist;
- (d) if the company is unable to pay its debts;
- (e) if the court is of the opinion that it is just and equitable that the company should be wound up;
- (f) if the court is satisfied that the company's affairs are being conducted, or the powers of the directors are being exercised, in a manner oppressive to any member or in disregard of his or her interests as a member and that, despite the existence of an alternative remedy, winding up would be justified in the general circumstances of the case but this paragraph is subject to *subsection (2)*;
- (g) if the court is satisfied, on a petition of the Director, that it is in the public interest that the company should be wound up; or
- (h) in the circumstances referred to [\[in\]<sup>382</sup>](#) *section [535](2) or [542](5)*.

(2) The court may dismiss a petition to wind up a company under *subsection (1)(f)* if it is of the opinion that proceedings under *section [212]* would, in all the circumstances, be more appropriate.

(3) *Subsection (1)* is in addition to the special cases (namely those provided under *sections [455](2)(d), [760] and [761]*) in which a company may be wound up by the court.

#### **Circumstances in which company deemed to be unable to pay its debts.**

[570]. For the purposes of this [\[PartAct\]<sup>383</sup>](#), a company shall be deemed to be unable to pay its debts -

- (a) if -
  - (i) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding €10,000 then due, has served on the company (by leaving it at the registered office of the company) a demand in writing requiring the company to pay the sum so due; and
  - (ii) the company has, for 21 days after the date of the service of that demand, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

<sup>382</sup> [Inserted by point 65 of Seanad Report Amendments.](#)

<sup>383</sup> [Substituted by point 66 of Seanad Report Amendments.](#)

(b) if -

(i) 2 or more creditors, by assignment or otherwise, to whom, in aggregate, the company is indebted in a sum exceeding €20,000 then due, have served on the company (by leaving it at the registered office of the company) a demand in writing requiring the company to pay the sum so due; and

(ii) the company has, for 21 days after the date of the service of that demand, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of each of the creditors;

or

(c) if 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

(d) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

**Provisions as to applications for winding up.**

[571]. (1) An application to the court for the winding up of a company shall be by petition presented either by -

(a) the company; or

(b) any creditor or creditors (including any contingent or prospective creditor or creditors) of the company; or

(c) any contributory or contributories of the company,

or by all or any of those parties, together or separately, but this is subject to the following provisions.

(2) The court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable, and until a *prima facie* case for winding up has been established to the satisfaction of the court.

(3) A winding-up petition on the grounds mentioned in *section [569](1)(f)* may be presented by any person entitled to bring proceedings for an order under *section [212]* in relation to the company concerned.

(4) In case falling within *section [569](1)(g)* a winding-up petition may be presented by the Director.

(5) A contributory shall not be entitled to present a winding-up petition unless the shares in respect of which the person is a contributory, or some of them, either –

(a) were originally allotted to the person or have been held by the person, and registered in the person's name, for at

least 6 months during the 18 months before the commencement of the winding up; or

(b) have devolved on the person through the death of a former holder.

**Powers of court on hearing petition.**

[572]. (1) On the hearing of a winding-up petition, the court may -

- (a) dismiss the petition; or
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any 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 assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) The court shall not make an order for the winding up of a company unless -

(a) the court is satisfied that the company has no obligations in relation to a bank asset that has been transferred to the National Asset Management Agency or a NAMA group entity; or

(b) if the company has any such obligation -

- (i) a copy of the petition has been served on that Agency; and
- (ii) the court has heard that Agency in relation to the making of the order.

(3) In *subsection (2)* “bank asset” and “NAMA group entity” have the same respective meanings as in the National Asset Management Agency Act 2009.

(4) Upon the making of an order to wind up a company, based on a ground referred to in paragraph (a),(b),(c),(e) or (f) of *section [569](1)*, the court may order that the company be wound up as if it were a members’ voluntary winding up and, in such event, the provisions of this Part shall apply as if the company were being so wound up.

(5) Where a petitioner does not proceed with his or her winding-up petition, the court may, upon such terms as it shall deem just, substitute as petitioner any person who would have a right to present a petition in relation to the company, and who wishes to proceed with the petition.

**Appointment of provisional liquidator.**

[573]. The court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the

first appointment of a liquidator.

**Power to stay or restrain proceedings against company.**

[574]. 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 on appeal in the Supreme Court, 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 High Court to restrain further proceedings in the action or proceeding,

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms and for such period as it thinks fit.

**Appointment of liquidator by the court.**

[575]. For the purpose of conducting the proceedings in winding up a company, the court may appoint a liquidator or liquidators.

**Effect of winding-up order.**

[576]. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company, as if made on the joint petition of a creditor and of a contributory.

**Saving for rights of creditors and contributories.**

[577]. The voluntary winding up of a company shall 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.

### Chapter 3

Members' voluntary winding up

**Application of Chapter.**

[578]. Save to the extent that the provision expressly provides otherwise, each provision of this Chapter applies only to a members' voluntary winding up.

**Procedure for and commencement of members' voluntary winding up.**

[579]. (1) A company may be wound up voluntarily as a members' voluntary winding up.

(2) In all cases, save for a case falling within *subsection (3)*, a members' voluntary winding up shall be commenced in accordance with the Summary Approval Procedure.

(3) In either of the following cases, namely :

(a) on the expiry of the period, if any, that is fixed for the duration of a company by its constitution ; or

(b) should such happen, when the event occurs on the occurrence of which a company's constitution provides that the company is to be dissolved,

a members' voluntary winding up of the company may, alternatively to the employment of the Summary Approval Procedure for that purpose, be commenced in accordance with *section [580]*.

**Companies of fixed duration, etc: alternative means of commencing members' voluntary winding up.**

[580]. (1) In a case falling with *paragraph (a)* or *(b)* of *section [579](3)*, a members' voluntary winding up of a company may be commenced if the company in general meeting has passed a resolution (whether before or after expiry of the period referred to in that *paragraph (a)* or the happening of the event referred to in that *paragraph (b)*) that the company be wound up voluntarily and *subsections (2) to (4)* are complied with.

(2) Where, in<sup>384</sup> either of the cases mentioned in *subsection (1)*, it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than 2 directors, the majority of the directors may, at a meeting of the directors, make a declaration to the effect that they have made a full inquiry into the affairs of the company, and that having done so, they have formed the opinion that the company will be able to pay or discharge its debts and other liabilities in full within such period not exceeding 12 months after the commencement of the winding up as may be specified in the declaration.

(3) Such a declaration shall have no effect for the purposes of this Part unless -

(a) it is made at a meeting of the directors held not earlier than 30 days before -

(i) the date of the meeting referred to in *subsection (1)*; or

(ii) if the resolution referred to in that subsection is passed by the means provided under *section [193]* or

[194], the date of the signing of the resolution by the last member to sign;

(b) it states the total amount of the company's assets and liabilities as at the latest practicable date before the date of making of the declaration and in any event at a date not more than 3 months before the date of that making;

(c) a report made, in accordance with the provisions of that subsection, by a person referred to in *subsection (4)* is attached to it; and

(d) either –

(i) the company has forwarded with each notice of the meeting at which the resolution is to be considered;

or

(ii) if the means referred to in *section [193] or [194]* for passing the resolution is followed, the company has appended to the resolution,

a copy of the declaration.

(4) The report referred to in *subsection (3)(c)* is a report drawn up, in the prescribed form, by a person qualified at the time of the report to be appointed, or to continue to be, the statutory auditor of the company and stating whether, in the opinion of that person, the declaration is not unreasonable.

(5) The company shall deliver, within 14 days after the commencement of the members' voluntary winding up under this section, a copy of the foregoing declaration to the Registrar.

[ (6) The provisions of this section shall be read and shall operate so that a members' voluntary winding up under this section may be carried on at a time falling before compliance with the requirement of *subsection (5)* that a copy of the declaration there referred to be delivered to the Registrar; however – should a failure to comply with that requirement occur – that failure then invalidates the carrying on of that activity, but this is without prejudice to the power of validation conferred on the court by *subsection (7)*.

(7) On application to it by any interested party, the court may, in any case where there has been a failure to comply with *subsection (5)*, declare that the carrying on of the members' voluntary winding up shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so.]<sup>385</sup>

#### **Publication of resolution to wind up voluntarily.**

[581]. (1) Where a company has passed a resolution for its voluntary winding up, whether –

(a) the special resolution referred to in *section [202](1)(a)(i)* – in a case where the Summary Approval Procedure is

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<sup>384</sup> Deleted by point 106 of Seanad Committee Amendments.

<sup>385</sup> Substituted by point 107 of Seanad Committee Amendments.

employed; or

(b) the resolution referred to in *section [580](1)* - where the procedure there mentioned is employed,

it shall, within 14 days after the date of the passing of the resolution, give notice of the resolution by advertisement in [*Iris Oifigiúil*].<sup>386</sup>

(2) If default is made in complying with this section, the company concerned and any officer of it who is in default shall be guilty of a category 3 offence.

(3) For the purposes of *subsection (2)*, the liquidator of the company shall be deemed to be an officer of the company.

### **Protections and remedies for creditors in cases where declaration of solvency made.**

[582]. (1) This section applies where a company has passed a resolution to wind up voluntarily.

(2) If, on application to it by a creditor of the company in accordance with *subsection (3)*, the court –

(a) is satisfied that such creditor, together with any creditors supporting him or her in the application, represents one-fifth at least in number or value of the creditors of the company; and

(b) is of opinion that it is unlikely that the company will be able to pay or discharge its debts and other liabilities within the period specified in the declaration concerned referred to in *section [207]* or *[580](2)*,

the court may order that all the provisions of this Act relating to a creditors' voluntary winding up shall apply to the winding up of the company.

(3) An application under *subsection (2)* shall be made within 30 days after the date on which the resolution for voluntary winding up of the company has been advertised under *section [581](1)*.

(4) If (in a case where the Summary Approval Procedure is employed) an application is made by one or more members of the company in accordance with *section [211]* to cancel the special resolution referred to in *section [202](1)(a)(i)*, the court may direct that that application and an application that is made under *subsection (2)* shall be heard together or may give such other direction in the matter as it thinks just.

(5) If the court makes an order of the kind referred to in *subsection (2)* –

(a) the person who held the office of liquidator immediately prior to the making of the order; or

(b) if no liquidator is acting, the company to which the order relates,

shall, within 21 days after the date of the making of the order, deliver a certified copy of such order to the Registrar.

(6) If default is made in complying with *subsection (5)*, the person referred to in paragraph (a) of it or, as the case may be, the company concerned and any officer of it who is in default shall be guilty of a category 4 offence.

(7) *Section [210]* (civil sanctions where opinion as to solvency stated in declaration without reasonable grounds) shall apply in relation to a declaration referred to in *section [580](2)* and, for this purpose, references in *section [210]* to the opinion referred to in *section [203](1)(f)*, *[204](1)(f)*, *[205](1)(c)*, *[206](1)(b)* or *[207](1)(b)* shall be read as references to the opinion referred to in *section [580](2)*.

**Power of company to appoint liquidators.**

[583]. The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company.

**Duty of liquidator to call creditors' meeting if of opinion that company unable to pay its debts.**

[584]. (1) If the liquidator is at any time of the opinion that the company will not be able to pay or discharge its debts and other liabilities in full within the period stated in the declaration concerned referred to in *section [207]* or *[580](2)*, as the case may be, the liquidator shall -

- (a) summon a meeting of creditors for a day not later than the 14th day after the day on which he or she formed that opinion;
- (b) send notices of the creditors' meeting to the creditors by post not less than 10 days before the day on which that meeting is to be held;
- (c) cause notice of the creditors' meeting to be advertised, at least 10 days before the date of the meeting, once in *[Iris Oifigiúil]*<sup>387</sup> and once at least in 2 daily newspapers circulating in the locality in which the company's principal place of business in the State was situated during the relevant period; and
- (d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require,

and the notice of the creditors' meeting shall state the duty imposed by *paragraph (d)*.

(2) The liquidator shall also -

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<sup>386</sup> Substituted by point 90 of Committee Amendments.

<sup>387</sup> Substituted by point 91 of Committee Amendments.

- (a) make out a statement in the prescribed form as to the affairs of the company, including a statement of the company's assets and liabilities, a list of the outstanding creditors and the estimated amount of their claims;
- (b) lay that statement before the creditors' meeting; and
- (c) attend and preside at that meeting.

(3) As from the day on which the creditors' meeting is held under this section, this Act shall have effect as if -

- (a) without prejudice to the powers of the court under *section [582](2)*, the directors' declaration referred to in *section [207]* or *[580](2)*, as the case may be, had not been made; and
- (b) the creditors' meeting and the company meetings at which it was resolved that the company be wound up voluntarily were the meetings mentioned in *section [587]*,

and, accordingly, the winding up shall become a creditors' voluntary winding up and any appointment made or committee established by the creditors' meeting shall be deemed to have been made or established by the creditors' meeting so mentioned.

(4) The appointment of a liquidator at a meeting called under this section shall not, subject to *subsection (5)*, affect the validity of any action previously taken by the liquidator appointed by the members of the company.

(5) Where -

- (a) the creditors appoint a liquidator at a meeting called under this section; and
- (b) there is a dispute as to any or all of the costs, charges or expenses incurred by, the liquidator appointed by the members of the company,

the liquidator appointed by the creditors, or any creditor, may apply to the court to determine the dispute and the court may, on such application, make such order as it thinks fit.

(6) Nothing in this section shall read as taking away any right in this Act of any person to present a petition to the court for the winding up of a company.

(7) If the liquidator fails to comply with *subsection (1)*, he or she shall be guilty of a category 3 offence.

(8) In this section "relevant period" means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

## Chapter 4

### Creditors' voluntary winding up

#### Application of Chapter.

[585]. Save to the extent that the provision expressly provides otherwise, each provision of this Chapter applies only to a creditors' voluntary winding up.

#### Resolution for and commencement of creditors' voluntary winding up.

[586]. (1) A company may be wound up voluntarily as a creditors' voluntary winding up.

(2) A winding up of a company as a creditors' voluntary winding up pursuant to *subsection (1)* may be initiated by the company in general meeting resolving that it cannot by reason of its liabilities continue its business, and that it be wound up as a creditors' voluntary winding up.

(3) A company shall be wound up as a creditors' voluntary winding up—

(a) if a creditors' meeting is held in accordance with *section [584]* in relation to the company; or

(b) if the court makes an order under *section [582](2)* in relation to the company; or

(c) if, in a case in which –

(i) a special resolution referred to in *section [202](1)(a)(i)* - where the Summary Approval Procedure is purported to be employed; or

(ii) the resolution referred to in *section [580](1)* - where the procedure there mentioned is purported to be employed,

is purported to be passed, the declaration referred to in *section [207]* or *[580](2)* is not made in accordance with the relevant provisions of *Chapter 7 of Part 4* or *section [580]*, as the case may be.

[(4) Where a company has passed a resolution for it to be wound up as a creditors' voluntary winding up, it shall, within 14 days after the date of the passing of the resolution, give notice of the resolution by advertisement in *Iris Oifigiúil*.

(5) If default is made in complying with *subsection (4)*, the company concerned and any officer of it who is in default shall be guilty of a category 3 offence.

(6) For the purposes of *subsection (5)*, the liquidator of the company shall be deemed to be an officer of the company.]<sup>388</sup>

**Meeting of creditors.**

[587]. (1) The company shall cause a meeting of the creditors of the company (the “creditors’ meeting”) to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for a creditors’ voluntary winding up is to be proposed.

(2) For that purpose, the company shall send to each creditor, at least 10 days before the date of the creditors' meeting, notice in writing of such meeting.

(3) The notice required by *subsection (2)* shall -

(a) state the date, time and location of the creditors’ meeting;

(b) state the name and address of the person at that time proposed for appointment as liquidator, if any; and

(c) either -

(i) attach a list of the creditors of the company; or

(ii) notify the recipient of his or her rights under *subsection (4)*, together with details of the location at which the list of creditors of the company may be inspected.

(4) A creditor who has not been provided with a copy of the list of the creditors of the company under *subsection (3)(c)(i)* may, at any time prior to the holding of the creditors’ meeting –

(a) having given the company 24 hours notice in writing of his or her intention to do so, inspect during business hours the list of creditors of the company at the registered office of the company; or

(b) request the company in writing to deliver a copy of the list of creditors of the company to him or her, and such a request shall be complied with by the company.

(5) That copy may be delivered by the company to the requesting person by post or, with the consent of the requesting person, in any other manner.

(6) The company shall cause notice of the creditors’ meeting to be advertised, at least 10 days before the date of the meeting, once at least in 2 daily newspapers circulating in the district where the registered office or principal place of business of the company is situate; such notice is not required to include the list of creditors attached, pursuant to *subsection (3)(c)(i)*, to the

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<sup>388</sup> Inserted by point 108 of Seanad Committee Amendments.

notice required by *subsection (2)*.

(7) The directors of the company shall -

- (a) cause a full statement of the position of the company's affairs, together with a list of the creditors of the company and the estimated amount of their claims, to be laid before the creditors' meeting; and
- (b) appoint one of their number to preside at that meeting and it shall be[ the]<sup>389</sup> duty of the director so appointed to attend the creditors' meeting and preside at it.

(8) In the case of a company having a sole director, *subsection (7)(b)* shall be read as imposing the duty there provided on that director.

(9) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the creditors' meeting shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(10) If default is made by the company -

- (a) in complying with *subsection (1), (2), (3) or (6)*; or
- (b) in permitting an inspection under *subsection (4)(a)*; or
- (c) in complying with a request under *subsection (4)(b)*,

the company and any officer of it who is in default shall be guilty of a category 3 offence.

(11) If default is made by the directors of the company in complying with *subsection (7)* or by any director in complying with his or her duty under that subsection, the directors or director, as the case may be, shall be guilty of a category 3 offence.

#### **Appointment of liquidator.**

[588]. (1) The creditors and the company at their respective meetings mentioned in *section [587]* may nominate a person to be liquidator for the purpose of winding up the company.

(2) Subject to *subsection (4)*, if -

- (a) the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator; and
- (b) if no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator.

(3) Where a person nominated by the company to be liquidator takes office before the creditors make their nomination and a

different person is nominated by the creditors, the first –mentioned person shall, by virtue of *subsection (2)(a)*, vacate office on the second-mentioned person’s being nominated but –

(a) this is without prejudice to *subsection (4)*; and

(b) for the period before the holding of the creditors’ meeting under *section [587]*, the first-mentioned person’s powers as liquidator are restricted as provided for in *section [630](2)*.

(4) Where different persons are nominated as liquidator, any director, member or creditor of the company may, within 14 days after the date on which the nomination was made by the creditors, apply to the court for the following order.

(5) That order is an order either –

(a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors,

and the court, on the making of an application under *subsection (4)*, may make such an order accordingly.

(6) If at a meeting of creditors mentioned in *section [587]* a resolution as to the creditors’ nominee as liquidator is proposed, it shall be deemed to be passed when a majority, in value only, of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution.

## Chapter 5

### Conduct of winding up

#### **Commencement of court ordered winding up.**

[589]. (1) Save in a case falling within *subsection (2)*, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the winding-up petition in respect of the company.

(2) Where, before the presentation of a winding-up petition in respect of a company, a resolution has been passed by the company for voluntary winding up, then, despite the fact that that petition is granted, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution.

(3) In a case falling within *subsection (2)*, unless the court, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

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<sup>389</sup> Inserted by point 109 of Seanad Committee Amendments.

**Commencement of voluntary winding up.**

[590]. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

**Copy of order for winding up or appointment to be forwarded to Registrar.**

[591]. (1) On the making of a winding-up order –

(a) such officer of the court as may be prescribed or directed by the court shall forthwith cause the Registrar to be furnished with such particulars as may be prescribed of the order; and

(b) a copy of the order shall, save where the company is the petitioner, be served by the petitioner, or such other person as the court may direct, upon the company at its registered office (if any) or, if there is no registered office or notice has not been given to the Registrar of such office, at its principal or last known principal place of business or upon such other person or persons or in such other manner as the court may direct.

(2) In a winding up by the court, on the making of an order appointing a liquidator (other than a provisional liquidator), such officer of the court as may be prescribed shall forthwith cause the Registrar to be furnished with such particulars as may be prescribed of the order.

**Notice by voluntary liquidator of his or her appointment.**

[592]. (1) In a voluntary winding up, the liquidator of the company shall, within 14 days after the date of his or her appointment, deliver to the Registrar a notice of his or her appointment.

(2) *Subsection (1)* does not apply in the case of an appointment to which *section [636]* or *[637]* (subsequent appointments of liquidator) applies; *section [643]* governs notifications and filings of subsequent such appointments.

(3) The Registrar shall forward a copy of that notice of appointment to the Director.

(4) If a liquidator of a company fails to comply with *subsection (1)*, he or she shall be guilty of a category 4 offence.

**Statement of company's affairs.**

[593]. (1) Where the court has made a winding-up order or appointed a provisional liquidator in relation to a company, there shall, unless the court thinks fit to order otherwise and so orders, be made out and filed in the court a statement as to the affairs

of the company (the “statement”) in the prescribed form, verified by affidavit.

(2) The statement shall show –

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names, residences and occupations of the company's creditors;
- (c) the securities held by those creditors respectively;
- (d) the dates when those securities were respectively given; and
- (e) such further or other information as may be prescribed or as the court may require.

(3) The statement shall be so filed and verified by -

- (a) subject to *paragraph (b)*, one or more of the persons who are at the relevant date the directors[...] <sup>390</sup> of the company; or
- (b) such of the persons mentioned in *subsection (4)* as the court may require to so file and verify the statement.

(4) The persons referred to in *subsection (3)(b)* are persons -

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within 12 months before the relevant date;
- (c) who are in the employment of the company, or have been in the employment of the company within that period of 12 months, and are, in the opinion of the court, capable of giving the information required;
- (d) who are or have been within that period of 12 months officers of or in the employment of a company which is, or within that period of 12 months was, an officer of the company to which the statement relates.

(5) The statement shall be so filed within 21 days after the relevant date or within such extended time as the court may for special reasons appoint.

(6) Subject to *section [594](7)*, any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the court may allow.

**Supplemental provisions in relation to *section [593]*.**

[594]. (1) In *section [593]* and this section the “relevant date” means –

(a) in a case where a provisional liquidator is appointed to the company, the date of his or her appointment; and

(b) in a case where no such appointment is made, the date of the winding-up order in respect of the company.

(2) The one or more persons who have made the statement of affairs of a company under *section [593]* (the “statement”) shall serve a copy of the statement on the liquidator (or the provisional liquidator, as the case may be) of the company as soon as may be after it is prepared and in any case not later than the expiry of 21 days after the relevant date or such extended time as the court may appoint under *section [593](5)*.

(3) The one or more persons who have made the statement shall –

(a) at the liquidator’s request, provide to the liquidator such information in relation to the company as the liquidator may reasonably require; and

(b) provide such assistance, as they are in a position to give, to the liquidator during the course, and for the purpose, of the liquidator’s examining (following his or her receipt of the statement) the company’s affairs as he or she may reasonably require.

(4) Where any person fails to comply with the request of a liquidator made in accordance with *subsection (3)*, the court may, on the application of the liquidator, direct the person to comply with such request.

(5) In *subsections (3) and (4)*, “liquidator” does not include a provisional liquidator.

(6) A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply –

(a) to the liquidator for his or her sanction and submit to the liquidator a statement of the estimated costs and expenses which the person intends to incur; or

(b) if there is no liquidator, to the court for its sanction.

(7) Except by order of the court, no person shall be allowed out of the assets of the company any costs or expenses in and about the preparation of a statement of affairs which have not, before being incurred, been sanctioned by the liquidator or the court.

(8) If any person, without reasonable excuse, makes default in complying with any of the requirements of *section [593]* or with any of the preceding requirements of this section, he or she shall be guilty of a category 3 offence.

(9) Any person who states in writing that the person is a creditor or contributory of the company shall, on payment of the

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<sup>390</sup> Deleted by point 170 of Report Amendments.

prescribed fee, be entitled personally, or by his or her agent -

(a) to inspect, at all reasonable times, the statement registered in pursuance of *section [593]*; and

(b) to be furnished with a copy of, or an extract from, it.

(10) Any person, not being a creditor or contributory of a company, who fraudulently states himself or herself to be a creditor or contributory of the company for the purpose of seeking to avail himself or herself of the provisions of *subsection (9)* shall be guilty of a category 3 offence.

**Notification that a company is in liquidation, etc.**

**[595].** (1) Every invoice, order for goods or business letter issued by or on behalf of –

(a) a company that is being wound up; or

(b) a liquidator of such a company,

being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) *Subsection (1)* is in addition (in cases where a company is in receivership) to the obligations of the receiver of the property of the company under *section [429]*.

(3) Every invoice, order for goods or business letter issued by or on behalf of –

(a) a company to which a provisional liquidator has been appointed;

(b) a provisional liquidator of the company; or

(c) a receiver of the property of such a company,

being a document –

(i) on or in which the name of the company appears; and

(ii) issued during the period of office of the provisional liquidator as such provisional liquidator,

shall contain a statement that a provisional liquidator has been appointed to the company.

(4) Any website of a company that is being wound up, and any electronic mail sent to a third party by, or on behalf of, such a company, shall contain a statement that the company is being wound up (and such a statement on a website shall be in a

prominent and easily accessible place on it).

(5) Where the winding up of a company commences within one year after the date on which the company has changed its name in accordance with this Act, the former name as well as the existing name of the company shall appear on all notices and advertisements in relation to the winding up and in any website of the company and in any electronic mail sent to a third party by, or on behalf of, it.

(6) If default is made in complying with *subsection (1), (3)* or (other than a case dealt with by *subsection (7)*) (5) -

(a) the company concerned and any officer of it who is in default; and

(b) any of the following persons who knowingly and intentionally authorises or permits the default, namely, any liquidator of the company and any receiver,

shall be guilty of a category 3 offence.

(7) If default is made in complying with the requirement under *subsection (4)* or (5) concerning the company's website, the company concerned and any officer of it who is [ in]<sup>391</sup> default shall be guilty of a category 3 offence.

(8) If default is made by a company, or any person acting on its behalf, in complying with the requirement under *subsection (4)* or (5) concerning electronic mail, then –

(a) in every case, the company and any officer of it who is in default; and

(b) where the default is made by a person acting on the company's behalf, that person,

shall be guilty of a category 3 offence.

(9) In this section “third party” means a person other than –

(a) an officer or employee of the company concerned; or

(b) a holding company or subsidiary of the company or an officer or employee of that holding company or subsidiary.

## Chapter 6

### Realisation of assets and related matters

#### **Custody of company's property.**

[596]. (1) Upon the appointment of a liquidator to a company, the liquidator shall take into his or her custody or under his or her control the seal, books and records of the company, and all the property to which the company is or appears to be entitled.

(2) A person who, without lawful entitlement or authority, has –

(a) at the date of the appointment of a liquidator to a company, possession or control of the books, records or other property of the company; or

(b) subsequent to such date comes into such possession or control,

shall surrender immediately to the liquidator such books, records or other property, as the case may be.

(3) In this section “liquidator” does not include a provisional liquidator.

**Circumstances in which floating charge is invalid.**

[597]. (1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within 12 months before the date of commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid.

(2) *Subsection (1)* does not apply to –

(a) money actually advanced or paid, or the actual price or value of goods or services sold or supplied, to the company at the time of or subsequently to the creation of, and in consideration for, the charge; nor

(b) interest on that amount at the appropriate rate.

(3) For the purposes of *subsection (2)*, the value of any goods or services sold or supplied by way of consideration for a floating charge is the amount in money which at the time they were sold or supplied could reasonably have been expected to be obtained for the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were sold or supplied to the company.

(4) Where a floating charge on the undertaking or property of a company is created in favour of a connected person, *subsection (1)* shall apply to such a charge as if the period of 12 months mentioned in that subsection were a period of 2 years.

**Other circumstances in which floating charge is invalid.**

[598]. (1) Where -

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<sup>391</sup> Inserted by point 110 of Seanad Committee Amendments.

- (a) a company is being wound up;
- (b) the company was, within 12 months before the date of commencement of the winding up, indebted to any officer of the company or a connected person;
- (c) such indebtedness was discharged whether wholly or partly by the company or by any other person; and
- (d) the company created a floating charge on any of its assets or property within 12 months before the date of commencement of the winding up in favour of the officer or connected person to whom such company was indebted,

then (without prejudice to any rights or liabilities arising apart from this section) such charge shall be invalid to the extent of the repayment referred to in *paragraph (c)* unless it is proved that the company immediately after the creation of the charge was solvent.

(2) In this section, “officer” includes a spouse, civil partner, child or nominee of an officer and the reference in this subsection to a child of an officer shall be deemed to include a child of the officer’s civil partner who is ordinarily resident with the officer and the civil partner.

**Related company may be required to contribute to debts of company being wound up.**

[599]. (1) On the application of the liquidator or any creditor or contributory of a company that is being wound up, the court, if it is satisfied that it is just and equitable to do so, may make the following order.

(2) That order is one that any company that is or has been related to the company being wound up shall pay to the liquidator of that company an amount equivalent to the whole or part of all or any of the debts provable in that winding up.

(3) The court may specify that that order shall be subject to such terms and conditions as the court thinks fit.

(4) In deciding whether it is just and equitable to make an order under this section the court shall have regard to the following matters -

- (a) the extent to which the related company took part in the management of the company being wound up;
- (b) the conduct of the related company towards the creditors of the company being wound up;
- (c) the effect which such order would be likely to have on the creditors of the related company concerned.

(5) No order shall be made under this section unless the court is satisfied that the circumstances that gave rise to the winding up of the company are attributable to the acts or omissions of the related company.

(6) Notwithstanding any other provision, it shall not be just and equitable to make an order under this section if the only ground for making the order is -

(a) the fact that a company is related to another company; or

(b) that creditors of the company being wound up have relied on the fact that another company is or has been related to the first-mentioned company.

(7) For the purposes of this section –

“company” includes any company, and any other body, which is liable to be wound up under this Act;

“creditor” means a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding €10,000 or 2 or more creditors, by assignment or otherwise, to whom in aggregate the company is indebted in a sum exceeding €20,000.

(8) Where an application for an order under this section seeks to require a [credit institution]<sup>392</sup> to contribute to the debts of a related company, a copy of every such application shall be sent by the applicant to the Central Bank which shall be entitled to be heard by the court before an order is made.

#### **Pooling of assets of related companies.**

[600]. (1) Where 2 or more related companies are being wound up and the court, on the application of the liquidator, or any creditor or contributor, of any of the companies, is satisfied that it is just and equitable to do so, it may make the following order.

(2) That order is one that, to the extent specified in the order, the companies shall be wound up together as if they were one company, and if such an order is made, it shall, subject to the provisions of this section, have effect and all the relevant provisions of this Part shall apply accordingly.

(3) The court may specify that that order shall be subject to such terms and conditions as the court thinks fit.

(4) In determining those terms and conditions, the court shall have particular regard to the interests of those persons who are members of some, but not all, of the companies.

(5) Where the court makes an order under this section -

(a) the court may remove any liquidator of any of the companies, and appoint any person to act as liquidator of any one or more of the companies;

(b) the court may give such directions as it thinks fit for the purpose of giving effect to the order;

(c) nothing in this section or the order shall affect the rights of any secured creditor of any of the companies;

(d) debts of a company that are to be paid in priority to all other debts of the company pursuant to *sections [621] and [622]* shall, to the extent that they are not paid out of the assets of that company, be subject to the claims of holders of debentures under any floating charge created by any of the other companies;

(e) unless the court otherwise orders, the claims of all unsecured creditors of the companies shall rank equally among themselves.

(6) In deciding whether it is just and equitable to make an order under this section, the court shall have regard to the following matters -

(a) the extent to which any of the companies took part in the management of any of the other companies;

(b) the conduct of any of the companies towards the creditors of any of the other companies;

(c) the extent to which the circumstances that gave rise to the winding up of any of the companies is attributable to the acts or omissions of any of the other companies;

(d) the extent to which the businesses of the companies have been intermingled.

(7) Notwithstanding any other provision, it shall not be just and equitable to make an order under this section if the only ground for making the order is -

(a) the fact that a company is related to another company; or

(b) that creditors of a company being wound up have relied on the fact that another company is or has been related to the first- mentioned company.

(8) Notice of an application to the court for the purposes of this section shall be served on every company specified in the application, and on such other persons as the court may direct, not later than the end of the 8th day before the day the application is heard.

(9) Without prejudice to *subsection (8)*, where a related company, the subject of an application for an order under this section, is a [ credit institution]<sup>393</sup>, a copy of the application shall be sent by the applicant to the Central Bank which shall be entitled to be heard by the court before an order is made.

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<sup>392</sup> Substituted by point 171 of Report Amendments.

<sup>393</sup> Substituted by point 172 of Report Amendments.

**Power of liquidator to accept shares as consideration for sale of property of company.**

[601]. (1) This section applies where a company is proposed to be, or is in course of being, wound up as a members' voluntary winding up, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company registered under this Act, an existing company or any other type of company or undertaking (in this section referred to as the "transferee company").

(2) Where this section applies, the liquidator of the first-mentioned company in *subsection (1)* (in this section referred to as the "transferor company") may, subject to *subsection (3)* –

(a) in compensation or part compensation for the foregoing transfer or sale, receive shares, policies or other like interests in the transferee company for distribution among the members of the transferor company; or

(b) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition to them, participate in the profits of, or receive any other benefit from, the transferee company.

(3) The powers of the liquidator under *subsection (2)* are not exercisable unless a special resolution of the company sanctions the exercise of those powers by the liquidator, whether generally or with regard to the particular arrangement concerned, but this subsection is without prejudice to *subsections (5)* and *(8)*.

(4) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(5) If -

(a) the voting rights conferred by any shares in the transferor company were not cast in favour of the resolution concerned referred to in *subsection (3)* conferring the sanction there mentioned on the liquidator; and

(b) the holder of those shares expresses his or her dissent from such sanction in writing addressed to the liquidator and left at the registered office of the company within 7 days after the date of passing of the resolution,

that holder may require the liquidator either to –

(i) abstain from carrying the resolution into effect; or

(ii) purchase that part of his or her interest which those shares represent at a price to be determined by agreement, or by arbitration in accordance with *subsections (9)* and *(10)*.

(6) If the liquidator elects to purchase that holder's interest, the purchase money shall be paid before the company is dissolved and, unless otherwise provided for, shall be deemed to be, and shall be paid as part of, the costs, charges and expenses of the

winding up.

(7) A resolution referred to in *subsection (3)* shall not be invalid for the purposes of this section by reason that it was obtained before or concurrently –

(a) with the passing of –

(i) the special resolution referred to in *section [202](1)(a)(i)* – in a case where the Summary Approval Procedure is employed; or

(ii) the resolution referred to in *section [580](1)* - where the procedure there mentioned is employed,

or

(b) with the passing of a resolution for appointing a liquidator or liquidators in that winding up.

(8) However a resolution referred to in *subsection (3)* shall not be effective to confer the sanction there mentioned if an order is made, within a year after the date of the resolution's passing, for winding up the company by the court, unless the resolution is confirmed by the court.

(9) An arbitration referred to in *subsection (5)(ii)* shall be conducted by a single arbitrator appointed by agreement in writing between the holder of shares referred to in *subsection (5)* and the liquidator or, in the absence of such agreement, by 2 arbitrators, one of whom shall be appointed in writing by each party to the arbitration.

(10) The provisions of the Arbitration Act 2010 applicable to arbitrations referred to in section 29 of that Act shall apply to an arbitration referred to in *subsection (5)*.

**Voidance of dispositions of property, etc. after commencement of winding up.**

**[602].** (1) This section applies to each of the following acts in any winding up of a company–

(a) any disposition of the property of the company;

(b) any transfer of shares in the company; or

(c) any alteration in the status of the members of the company,

made after the commencement of the winding up.

(2) Without prejudice to *subsection (3)*, an act to which this section applies that is done without the sanction of –

(a) the liquidator of the company; or

(b) a director of the company who has, by virtue of [section [677](3)]<sup>394</sup> retained the power to do such act,

shall, unless the court otherwise orders, be void.

(3) Nothing in this section makes a person who does an act rendered void by this section liable for doing such act, being an act that was done by the person at the request of the company, unless it is proved that, prior to the person's doing the act, the person had actual notice that the company was being wound up.

(4) If a company that is being wound up makes a request of a person to do an act referred to in *subsection (3)* and does not, at or before the time of making the request, inform the person that it is being wound up, the company and any officer of it who is in default shall be guilty of a category 2 offence.

(5) Nothing in *subsection (4)* shall be read as limiting any liability, civil or criminal, that, apart from this section, may attach to a company, or any officer of it, for making a request of the kind referred to in that subsection, irrespective of the consideration that the relevant facts have been communicated to the person concerned or that those facts are otherwise in the knowledge of that person.

#### **Voidance of executions against property of company.**

[603]. Unless the court orders otherwise, where a company is being wound up, each of the following shall be void, namely, any

—

(a) attachment;

(b) sequestration;

(c) distress; or

(d) execution,

put in force against the property or effects of the company after the commencement of the winding up.

#### **Unfair preference: effect of winding up on antecedent and other transactions.**

[604]. (1) *Subsection (2)* applies to each of the following acts, namely, any -

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<sup>394</sup> Substituted by point 173 of Report Amendments.

- (a) conveyance;
- (b) mortgage; or
- (c) delivery of goods, payment, execution or other act,

relating to property made or done by or against a company, which is unable to pay its debts as they become due, in favour of –

- (i) any creditor of the company; or
- (ii) any person on trust for any such creditor.

(2) An act to which this subsection applies, that is done with a view to giving the creditor referred to in *subsection (1)(i)*, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors of the company, shall be deemed an unfair preference of its creditors and be invalid accordingly if –

- (a) a winding up of the company commences within 6 months after the date of the doing of the act; and
- (b) the company is, at the time of the commencement of the winding up, unable to pay its debts (taking into account the contingent and prospective liabilities).

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

(4) An act to which *subsection (2)* applies in favour of a connected person which was done within 2 years before the commencement of the winding up of the company shall, unless the contrary is shown, be deemed in the event of the company being wound up -

- (a) to have been done with a view to giving such person a preference over the other creditors; and
- (b) to be an unfair preference, and be invalid accordingly.

(5) *Subsections (2) and (4)* shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the company.

**Liabilities and rights of persons who have been unfairly preferred.**

[605]. (1) Where -

- (a) a company is being wound up; and
- (b) any act done is void under *section [604]* as an unfair preference of a person interested in property mortgaged or charged to secure the company's debt,

then (without prejudice to any rights or liabilities arising apart from this section) the person preferred shall be subject to the same liabilities and shall have the same rights as if he or she had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his or her interest, whichever is the less.

(2) The value of the foregoing person's interest shall be determined as at the date of the act constituting the unfair preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the court in relation to any payment on the ground that the payment was an unfair preference of a surety or guarantor, the court -

(a) may determine any questions relating to the payment arising between the person to whom the payment was made and the surety or guarantor and grant relief in respect thereof; and

(b) for that purpose, may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid,

and jurisdiction to do any of those things may be exercised notwithstanding that it is not necessary to exercise such jurisdiction for the purposes of the winding up.

(4) *Subsection (3)* shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies to payments.

**Restriction of rights of creditor as to execution or attachment in case of company being wound up.**

[606]. (1) Subject to *subsections (2) to (4)*, where a creditor has -

(a) issued execution against the goods or lands of a company; or

(b) attached any debt due to the company,

and the company is subsequently wound up, the creditor shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless the creditor has completed the execution or attachment before the commencement of the winding up.

(2) In a case where a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up of the company concerned is to be proposed, then, for the purposes of *subsection (1)*, the date on which the creditor so had notice shall be substituted for the date of the commencement of the winding up.

(3) A person who purchases in good faith, under a sale by a sheriff, any goods of a company on which an execution has been levied shall, in all cases, acquire a good title to them against the liquidator.

(4) Notwithstanding *subsection (1)*, the rights conferred by that subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(5) For the purposes of this section –

(a) an execution against goods shall be deemed to be completed by seizure and sale;

(b) an attachment of a debt shall be deemed to be completed by receipt of the debt;

(c) an execution against land shall be deemed to be completed by seizure; and

(d) an execution in the case of an equitable interest shall be deemed to be completed by the appointment of a receiver.

(6) Nothing in this section shall give any validity to any payment constituting an unfair preference.

(7) In this section -

“goods” includes all chattels personal;

“sheriff” includes any officer charged with the execution of a writ or other process.

**Duties of sheriff as to goods taken in execution.**

[607]. (1) Subject to *subsection (5)*, where any goods of a company are taken in execution and, before the sale of them or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that, in relation to the company –

(a) a provisional liquidator has been appointed; or

(b) a winding-up order has been made; or

(c) a resolution for voluntary winding up has been passed,

the sheriff shall, on being required to do so by the liquidator, deliver to the liquidator the goods and any money seized or received in part satisfaction of the execution.

(2) However, in the foregoing case, the costs of the execution shall be a first charge on the goods or the money so delivered, and the liquidator may sell the goods or a sufficient part of them for the purpose of satisfying that charge.

(3) Subject to *subsection (5)*, where under an execution in respect of a judgment for a sum exceeding €1,000 the goods of a company are sold or money is paid in order to avoid sale, the following procedures shall be adopted by the sheriff, namely, he or she shall -

- (a) deduct the costs of the execution from the proceeds of the sale or the money paid;
- (b) retain the balance for a period of 14 days after the date of the sale or the payment of the money,

and, if the events referred to in *subsection (4)(a)* and *(b)* occur, the sheriff shall pay the balance to the liquidator of the company who shall be entitled to retain it as against the execution creditor.

(4) The events mentioned in *subsection (3)* are –

- (a) within the period referred to in *subsection (3)(b)*, notice is served on the sheriff of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company; and
- (b) an order is made or a resolution is passed, as the case may be, for the winding up of the company.

(5) Notwithstanding *subsection (1)* or *(3)*, the rights conferred by either subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(6) The notice referred to in *subsection (1)* or *(4)* shall be in writing and addressed to the sheriff and may be served by being delivered by hand, or by pre-paid registered post, at his or her office.

(7) In this section “goods” and “sheriff” have the same meaning as they have in *section 607*.

**Power of the court to order return of assets which have been improperly transferred.**

[608]. (1) The court has the following power where, on the application of a liquidator, creditor or contributory of a company which is being wound up, it can be shown to the satisfaction of the court that -

- (a) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer, mortgage, security, loan, or in any way whatsoever whether by act or omission, direct or indirect; and
- (b) the effect of such disposal was to perpetrate a fraud on the company, its creditors or members.

(2) That power of the court is to order, if it deems it just and equitable to do so, any person who appears to have –

- (a) the use, control or possession of the property concerned; or

(b) the proceeds of the sale or development of that property,

to deliver it or them, or pay a sum in respect thereof, to the liquidator on such terms or conditions as the court thinks fit.

(3) This section shall not apply to any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company to which *section [604]* applies.

(4) In deciding whether it is just and equitable to make an order under this section, the court shall have regard to the rights of persons who have *bona fide* and for value acquired an interest in the property the subject of the application.

(5) This section is in addition to, and not in substitution for, any restitutionary or other relief by way of recovery (including the remedy of tracing) that is available to a liquidator or any other person.

**Personal liability of officers of company where adequate accounting records not kept.**

[609]. (1) Subject to *subsection (2)*, if -

(a) a company that is being wound up and that is unable to pay all of its debts has contravened any of *sections [281]* to [285]; and

(b) the court considers that such contravention has –

(i) contributed to the company's inability to pay all of its debts; or

(ii) resulted in substantial uncertainty as to the assets and liabilities of the company; or

(iii) substantially impeded the orderly winding up of the company,

the court, on the application of the liquidator or any creditor or contributory of the company, has the following power.

(2) That power of the court is to declare, if it thinks it proper to do so, that any one or more of the officers and former officers of the company who, with respect to the contravention, is or are in default shall be personally liable, without any limitation of liability, for all, or such part as may be specified by the court, of the debts and other liabilities of the company.

(3) On the hearing of an application under this section, the person bringing the application may himself or herself give evidence or call witnesses.

(4) Where the court makes a declaration under this section, it may give such directions as it thinks proper for the purpose of giving effect to the declaration.

(5) In particular, and without limiting *subsection (4)*, the order providing for a declaration under this section, or a supplemental

order, may include provision for making the liability of any person under the declaration (the “respondent”) a charge on –

(a) any debt or obligation due from the company to the respondent; or

(b) any mortgage or charge, or any interest in any mortgage or charge, on any assets of the company held by or vested in –

(i) the respondent or any company or other person on the respondent’s behalf; or

(ii) any person claiming as assignee from or through the respondent or any company or other person acting on behalf of the first-mentioned person in this subparagraph.

(6) The court may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under *subsection (5)*.

(7) In *subsection (5)(b)(ii)* “assignee” includes any person to whom or in whose favour, by the directions of the person liable under the declaration, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; however the expression does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(8) The court shall not make a declaration under this section in respect of a person if it considers that -

(a) the person took all reasonable steps to secure compliance by the company with *sections [281] to [285]*; or

(b) the person had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of a director of the company who has been formally allocated such responsibility, was –

(i) charged with the duty of ensuring that those sections were complied with; and

(ii) in a position to discharge that duty.

(9) This section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

(10) In this section “officer”, in relation to a company, includes a person who has been convicted of an offence under *section [389], [392], [393], [406] or [876]* concerning accounting records of the company or, as the case may be, a statement made to statutory auditors concerning such records.

**Civil liability for fraudulent or reckless trading of company.**

[610]. (1) If in the course of the winding up of a company or in the course of proceedings under *Part 10* in relation to a company, it appears that -

(a) any person was, while an officer of the company, knowingly a party to the carrying on of any business of the company in a reckless manner; or

(b) any person was knowingly a party to the carrying on of any business of the company with intent to defraud creditors of the company, or creditors of any other person or for any fraudulent purpose,

the court, on the application of the liquidator or examiner of the company, a receiver of property of the company or any creditor or contributory of it, has the following power.

(2) That power of the court is to declare, if it thinks it proper to do so, that the person first-mentioned in *paragraph (a)* or *(b)* of *subsection (1)* shall be personally responsible, without any limitation of liability, for all or any part of the debts or other liabilities of the company as the court may direct.

(3) Without prejudice to the generality of *subsection (1)(a)*, an officer of a company shall be deemed to have been knowingly a party to the carrying on of any business of the company in a reckless manner if -

(a) the person was a party to the carrying on of such business and, having regard to the general knowledge, skill and experience that may reasonably be expected of a person in his or her position, the person ought to have known that his or her actions or those of the company would cause loss to the creditors of the company, or any of them; or

(b) the person was a party to the contracting of a debt by the company and did not honestly believe on reasonable grounds that the company would be able to pay the debt when it fell due for payment as well as all its other debts (taking into account the contingent and prospective liabilities).

(4) Notwithstanding anything contained in *subsection (2)*, the court may grant a declaration on the grounds set out in *subsection (1)(a)* only if -

(a) *paragraph (a), (b), (c) or (d) of section [570]* applies to the company concerned; and

(b) an applicant for such a declaration, being a creditor or contributory of the company or any person on whose behalf such application is made, suffered loss or damage as a consequence of any behaviour mentioned in *subsection (1)*.

(5) In deciding whether it is proper to make a declaration on the ground set out in *subsection (3)(b)*, the court shall have regard to whether the creditor in question was, at the time the debt was incurred, aware of the company's financial state of affairs and, notwithstanding such awareness, nevertheless assented to the incurring of the debt.

(6) Where the court makes a declaration under this section, it may provide that sums recovered under this section shall be paid to such person or classes of persons, for such purposes, in such amounts or proportions at such time or times and in such respective priorities among themselves as such declaration may specify.

(7) On the hearing of an application under this section, the applicant may himself or herself give evidence or call witnesses.

(8) Where it appears to the court that any person in respect of whom a declaration has been sought on the grounds set out in *subsection (1)(a)* has acted honestly and responsibly in relation to the conduct of the affairs of the company or any matter or matters on the ground of which such declaration is sought to be made, the court may, having regard to all the circumstances of the case, relieve him or her either wholly or in part, from personal liability on such terms as it may think fit.

**Supplemental provisions in relation to *section [610]*.**

[611]. (1) Where the court makes a declaration under *section [610]*, it may give such directions as it thinks proper for the purpose of giving effect to the declaration.

(2) In particular, and without limiting *subsection (1)* or *section [610](6)*, the order providing for a declaration under *section [610]*, or a supplemental order, may include provision for making the liability of any person under the declaration (the “respondent”) a charge on –

(a) any debt or obligation due from the company to the respondent; or

(b) any mortgage or charge, or any interest in any mortgage or charge, on any assets of the company held by or vested in –

(i) the respondent or any company or other person on the respondent’s behalf; or

(ii) any person claiming as assignee from or through the respondent or any company or other person acting on behalf of the first-mentioned person in this subparagraph.

(3) Where a charge is imposed as mentioned in *subsection (2)*, the court may from time to time make such further order as may be necessary for the purpose of enforcing that charge.

(4) *Section [610](1)(a)* shall not apply in relation to the carrying on of the business of a company during a period when the company is under the protection of the court.

(5) *Section [610]* and this section shall have effect notwithstanding that –

(a) the person in respect of whom the declaration has been sought under *section [610]* may be criminally liable in respect of the matters on the ground of which such declaration is to be made; or

(b) any matter or matters on the ground of which the declaration under *section [610]* is to be made have occurred outside the State.

(6) In *section [610]* “officer”, in relation to a company, includes a statutory auditor or liquidator or provisional liquidator of the company, a receiver of property of the company and a shadow director of it.

(7) In *subsection (2)(b)(ii)* “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

**Power of court to assess damages against certain persons.**

[612]. (1) *Subsection (2)* applies if in the course of winding up a company it appears that –

(a) any person who has taken part in the formation or promotion of the company; or

(b) any past or present officer, liquidator, provisional liquidator or examiner of the company, or receiver of the property of the company,

has misapplied or retained or become liable or accountable for any money or property of the company, or has been guilty of any misfeasance or other breach of duty or trust in relation to the company.

(2) The court may, on the application of the Director or the liquidator or any creditor or contributory of the company, examine into the conduct of the promoter, officer, liquidator, examiner or receiver, and compel him or her -

(a) to repay or restore the money or property or any part of it respectively with interest at such rate as the court thinks just; or

(b) to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or other breach of duty or trust as the court thinks just.

(3) This section shall have effect notwithstanding that the person in respect of whom an order has been sought under it may be criminally liable in respect of the matters on the ground of which the order is to be made.

**Directors of holding company: power of court to assess damages against them.**

[613]. (1) *Subsection (2)* applies if, in the course of winding up a company which is a subsidiary of another company, it appears that any director of the subsidiary’s holding company has –

(a) misapplied or retained or become liable or accountable for any money or property of the subsidiary; or

(b) been guilty of any misfeasance or other breach of duty or trust in relation to the subsidiary.

(2) The court may, on the application of the liquidator or any creditor, contributory or member of the subsidiary, examine into the conduct of the director concerned and compel him or her -

(a) to repay or restore the money or property or any part of it respectively with interest at such rate as the court thinks just; or

(b) to contribute such sum to the assets of the subsidiary by way of compensation in respect of the misapplication, retainer, misfeasance or other breach of duty or trust as the court thinks just.

(3) This section -

(a) shall have effect notwithstanding that the person in respect of whom an order has been sought under it may be criminally liable in respect of the matters on the ground of which the order is to be made; and

(b) is without prejudice to any other basis for imposing liability on any person (whether related to the company or not) in respect of the person's acts or defaults in relation to the company or its property.

#### **Vesting of property of company in liquidator.**

[614]. (1) Where a company is being wound up, the court may, on the application of the liquidator, by order, direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his or her official name.

(2) On such an order being made -

(a) the property to which the order relates shall vest accordingly in the liquidator; and

(b) the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his or her official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

#### **Disclaimer of onerous property in case of company being wound up.**

[615]. (1) In this section "onerous property" means property (whether tangible or intangible) that is property of a company which is being wound up and that falls into one or more of the following categories:

(a) land of whatsoever kind burdened with onerous covenants;

(b) shares or stock in any company or undertaking;

(c) an unprofitable contract;

(d) any other property which is unsaleable or not readily saleable by reason of its binding the possessor of it to the performance of any onerous act or to the payment of any sum of money.

(2) Subject to *subsections (4) and (7)*, the liquidator of the company concerned may, with the leave of the court and subject to the provisions of this section, by writing signed by him or her, at any time within the relevant period, disclaim onerous property; such leave may be granted by the court and the property disclaimed notwithstanding that the liquidator –

(a) has endeavoured to sell or has taken possession of the property; or

(b) has exercised any act of ownership in relation to it.

(3) In *subsection (2)* “relevant period” means the period of 12 months after the date of the commencement of the winding up of the company or such extended period as may be allowed by the court.

(4) Where the existence of onerous property has not come to the knowledge of the liquidator of the company concerned within one month after the date of the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within 12 months after the date on which the liquidator has become aware thereof or such extended period as may be allowed by the court.

(5) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed; however it shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(6) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(7) The liquidator shall not be entitled to disclaim any property under this section in any case where –

(a) an application in writing has been made to the liquidator by any person interested in the property requiring the liquidator to decide whether he or she will or will not disclaim; and

(b) the liquidator has not, within a period of 28 days after the date of receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he or she intends to apply to the court for leave to disclaim.

(8) Any person damaged by the operation of a disclaimer under this section shall be deemed to be a creditor of the company concerned to the amount of the damages, and may accordingly prove the amount as a debt in the winding up.

**Rescission of certain contracts and provisions supplemental to section [615].**

[616]. (1) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just.

(2) Any damages payable under such an order to any such person shall be deemed to be a debt proved and admitted in the winding up.

(3) Subject to *subsection (6)*, the court, on an application by any person who either claims any interest in any property disclaimed under *section [615]* or is under any liability not discharged by this Act in respect of any property so disclaimed, has, on hearing any such persons as it thinks fit, the following power.

(4) That power of the court is to make an order for the vesting of the property in, or the delivery of the property to, any person entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for any liability of the foregoing kind, or a trustee for him or her, and on such terms as the court may think just.

(5) On any such vesting order being made, the property comprised therein shall vest accordingly in the person named in the order in that behalf without any conveyance or assignment for the purpose.

(6) Where the property disclaimed under *section [615]* is of a leasehold nature, the court shall not make a vesting order under this section in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person -

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires), as if the lease had comprised only the property comprised in the vesting order.

(7) Any mortgagee or under-lessee declining to accept the making of a vesting order upon such terms as are referred to in *subsection (6)* shall be excluded from all interest in and security upon the property concerned.

(8) If there is no person claiming under the company who is willing to accept the making of an order upon such terms as are

referred to in *subsection (6)*, the court shall have power to vest the estate and interest of the company in the property concerned in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

## Chapter 7

### Distribution

#### Costs, etc. in winding up.

[617]. (1) All costs, charges and expenses properly incurred in the winding up of a company, including the remuneration of the liquidator, remaining after payment of -

- (a) the fees and expenses properly incurred in preserving, realising or getting in the assets; and
- (b) where the company has previously commenced to be wound up voluntarily, such remuneration, costs and expenses as the court may allow to a liquidator appointed in such voluntary winding up,

shall be payable out of the property of the company in priority to all other claims, and shall be paid or discharged in the order of priority set out in *subsection (2)*.

(2) The costs, charges and expenses referred to in *subsection (1)* shall, subject to any order made by the court in a winding up by it, be liable to the following payments which shall be made in the following order of priority, namely -

- (a) First— In the case of a winding up by the court, the costs of the petition, including the costs of any person appearing on the petition whose costs are allowed by the court;
- (b) Next— Any costs and expenses necessarily incurred in connection with the summoning, advertisement and holding of a creditors' meeting under *section [587]*;
- (c) Next— The costs and expenses necessarily incurred in and about the preparation and making of, or concurring in the making of, the statement of the company's affairs and the accompanying list of creditors and the amounts due to them as required by *section [587](7)*;
- (d) Next— The necessary disbursements of the liquidator, other than expenses properly incurred in preserving, realising or getting in the assets as provided for in *subsection (1)*;
- (e) Next— The costs payable to the solicitor for the liquidator;

(f) Next— The remuneration of the liquidator;

(g) Next— The out-of-pocket expenses necessarily incurred by the committee of inspection (if any).

(3) *Subsection (4)* applies in relation to a person who has provided funds to discharge any such costs, charges or expenses (other than costs or expenses referred to in *subsection (2)(b)* or *(c)*) as are referred to in *subsection (1)*.

(4) Such person shall be entitled to be reimbursed to the extent of the funds so provided by him or her in the same order of priority as to payment out of the property of the company as would otherwise have applied to the costs, charges or expenses concerned.

#### **Distribution of property of company.**

[618]. (1) Subject to the provisions of this Act as to preferential payments, the property of a company on its winding up -

(a) shall, subject to *subsection (2)*, be applied in satisfaction of its liabilities *pari passu*; and

(b) shall, subject to such application, and unless the constitution of the company otherwise provides, be distributed among the members according to their rights and interests in the company.

(2) Nothing in *subsection (1)(a)* shall in any way affect any rights or obligations of the company or any other person arising as a result of any agreement entered into by any person under which any particular liability of the company to any general creditor is postponed in favour of or subordinated to the rights or claims of any other person to whom the company may be in any way liable.

(3) Subject to the provisions of this Part, in the case of a members' voluntary winding up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by this Act, divide among the members, *in specie* or kind, the whole or any part of the property of the company (whether they shall consist of property of the same kind or not) and may, for such purpose -

(a) set such value as he or she deems fair upon any property to be divided in that manner; and

(b) determine how such division shall be carried out as between the members or different classes of members,

but so that no member shall be compelled to accept any shares or other securities on which there is any liability.

(4) In the case of such a voluntary winding up, the liquidator may, subject to the provisions of this Part and with the like sanction, vest the whole or any part of such property in trustees upon such trusts for the benefit of the members as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities on which there is any liability.

(5) In subsection (2) –

“liability” includes a contingent liability;

“person” includes a class of persons.

**Application of bankruptcy rules in winding up of insolvent companies.**

[619]. (1) In the winding up of an insolvent company the same rules shall prevail and be observed relating to –

- (a) the respective rights of secured and unsecured creditors;
- (b) debts provable; and
- (c) the valuation of annuities and future and contingent liabilities,

as are in force for the time being under the law of bankruptcy relating to the estates of persons adjudicated bankrupt.

(2) In particular, all persons who in any such case would be entitled to prove for and receive dividends out of the property of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

(3) Subsection (1) of section 51 of the Bankruptcy Act 1988 shall apply in the winding up of an insolvent company and, accordingly, the reference in that subsection to the date of adjudication shall be read as –

- (a) subject to *paragraph (b)*, a reference to, as the case may be –
  - (i) the presentation of a petition for the winding up of the company by the court; or
  - (ii) the passing of a resolution for voluntary winding up,

and

- (b) where, before the presentation of a petition for the winding up of the company by the court, a resolution has been passed by the company for voluntary winding up, a reference to the passing of the resolution.

**Debts which may be proved.**

[620]. (1) Subject to the provisions of this section, in a winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of bankruptcy) the following shall be admissible to proof against the company -

(a) all debts payable on a contingency;

and

(b) all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, a just estimate being made, so far as possible, of the value of such debts or claims which may be subject to any contingency or which sound only in damages, or for some other reason do not bear a certain value.

(2) The value of such debts and claims as are made admissible to proof by *subsection (1)* shall, as far as possible, be estimated according to the value thereof at the date on which the winding up shall be deemed to have commenced by virtue of *section [589]* or *[590]*, as the case may be (referred to subsequently in this section as the “commencement date”).

(3) When any rent or other payment falls due at stated times and the order or resolution to wind up is made at any time other than at one of those times, the persons entitled to the rent or payment may prove for a proportionate part of it up to the commencement date as if the rent or payment accrued due from day to day but this is subject to *subsection (4)*.

(4) Where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing in *subsection (3)* shall affect the right of the landlord of such premises to claim payment of rent during the period of the company’s occupation after the commencement of the winding up.

(5) *Subsection (6)* applies to a debt or sum if all of the following conditions are satisfied in respect of it:

(a) it is a debt or sum certain;

(b) it is payable at a certain time or otherwise;

(c) interest on it is not reserved or agreed for;

and

(d) it is overdue at the commencement date.

(6) The creditor may prove for interest on a debt or sum to which this subsection applies at a rate, not exceeding the appropriate rate, for the period up to the commencement date and beginning –

(a) if the debt or sum is payable by virtue of a written instrument at a certain time - at the time when the debt or sum was so payable; and

(b) if the debt or sum is payable otherwise - at the making of a demand in writing in respect of it, being a demand giving notice that interest will be claimed from the date of the demand until the time of payment.

(7) A creditor may prove for a debt not payable at the commencement date as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the appropriate rate computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

(8) Unless the company's constitution or the conditions of issue of the shares in question provide otherwise, dividends declared by a company more than 6 years preceding the commencement date, being dividends which have not been claimed within that period of 6 years, shall not be a claim admissible to proof against the company for the purposes of the winding up.

**Preferential payments in a winding up.**

[621]. (1) In this section the "relevant date" means -

(a) where the company is ordered to be wound up, the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment was made, the date of the winding-up order, unless, in either case, the company had commenced to be wound up voluntarily before that date; and

(b) where *paragraph (a)* does not apply, the date of the passing of the resolution for the winding up of the company.

(2) In a winding up there shall be paid in priority to all other debts -

(a) the following rates and taxes -

(i) all local rates due from the company at the relevant date and having become due and payable within the period of 12 months before that date;

(ii) each tax assessable on, in relation to, or by the company under the Taxes Consolidation Act 1997 in respect of, or apportioned on a time basis to, a period ending on or before the relevant date, for which the tax concerned is due and payable, but the particular period (in respect of which priority under this subparagraph for the tax concerned is claimed) shall not be of more than 12 months duration;"]<sup>395</sup>

(iii) any amount due at the relevant date in respect of sums which an employer is liable under Part 18D or Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 and regulations thereunder to deduct from emoluments to which that Part or Chapter applies paid by that employer during the period of 12 months next ended on or before the relevant date reduced by any amount which that employer was under that Part or Chapter and regulations thereunder liable to repay during that period, with the addition of interest payable under section 991 of that Act;

(iv) any tax and interest for which the company is liable under the Value-Added Tax Consolidation Act 2010 in relation to taxable periods which shall have ended within the period of 12 months next ended before the relevant date;

(v) any local property tax that the company is liable to remit to the Revenue Commissioners under section 74 of the Finance (Local Property Tax) Act 2012 during the period of 12 months next ended before the relevant date and any interest payable in relation to that tax under section 149 of that Act;

(vi) an amount of local property tax payable, under section 16 of the Finance (Local Property Tax) Act 2012, by the company at the relevant date to the extent that such tax is payable in respect of any one liability date (within the meaning of section 2 of that Act) falling before the relevant date and any interest payable in relation to that tax under section 149 of that Act;<sup>396</sup>

(b) all wages or salary –

(i) whether or not earned wholly or in part by way of commission; or

(ii) whether payable for time or for piece work,

of any employee in respect of services rendered to the company during the period of 4 months before the relevant date;

(c) all accrued holiday remuneration becoming payable to any employee (or, in the case of the person's death, to any other person in his or her right) on the termination of the employee's employment before or by the effect of the winding up order or resolution;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company -

(i) all amounts due in respect of contributions which are payable during the 12 months before the relevant date by the company as the employer of any persons under the Social Welfare Acts; and

(ii) all amounts due in respect of contributions which would have been payable under the provisions of section 13(2)(d) of the Social Welfare Consolidation Act 2005 by the company as the employer of any persons in respect of any remuneration in respect of any period of employment during the 12 months before the relevant date even if such remuneration is paid after the relevant date;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation

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<sup>395</sup> Substituted by point 174 of Report Amendments.

with another company, all amounts due from the company in respect of damages and costs or liability for damages and costs, payable to a person employed by it in connection with an accident, being an accident occurring –

(i) before the relevant date; and

(ii) in the course of the person's employment with the company,

save to the extent that the company is not effectively indemnified by insurers against such damages and costs;

(f) all sums due to any employee pursuant to any scheme or arrangement for the provision of payments to the employee while he or she is absent from employment due to ill health;

(g) any payments due at any time by the company pursuant to any scheme or arrangement for the provision of superannuation benefits to or in respect of employees of the company whether such payments are due –

(i) in respect of the company's contribution to that scheme or under that arrangement; or

(ii) in respect of such contributions payable by the employees to the company under that scheme or arrangement which have been deducted from the wages or salaries of employees.

(3) *Subsection (2)* is in addition to any other enactment providing for the priority of a particular debt or sum in a winding up.

(4) Subject to *subsection (5)*, and notwithstanding anything in *subsection (2)(b)*, the sum to which priority is to be given under *subsection (2)(b)* shall not, in the case of any one claimant, exceed €10,000.

(5) Where a claimant under *subsection (2)(b)* is a farm labourer who has entered into a contract for payment of a portion of his or her wages in a lump sum at the end of the year of hiring, he or she shall have priority in respect of the whole of such sum, or such part thereof as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(6) Where any payment has been made -

(a) to any employee of a company, on account of wages or salary; or

(b) to any employee or, in the case of his or her death, to any other person in his or her right, on account of accrued holiday remuneration; or

(c) to any employee while he or she is absent from employment due to ill health or pursuant to any scheme or arrangement for the provision of superannuation benefit to or in respect of him or her,

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<sup>396</sup> Substituted by point 92 of Committee Amendments.

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid up to the amount by which the sum, in respect of which the employee or other person in his or her right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(7) The foregoing debts shall -

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(8) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of debts to which priority is given by *subsection (2)(d)*, formal proof of them shall not be required except in so far as is otherwise provided by rules of court.

**Supplemental provisions in relation to *section [621]*.**

**[622].** (1) Subject to *subsection (2)*, in the event of a landlord or other person distraining or having distrained on any goods or effects of a company within the period of 3 months before the relevant date, the debts to which priority is given by *section [621]* shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.

(2) In respect of any money paid under any such charge as is referred to in *subsection (1)*, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(3) For the purpose of *section [621]* any remuneration in respect of a period of holiday, or absence from work through good cause, shall be deemed to be wages in respect of services rendered to a company during that period.

(4) Subject to *subsection (5)*, the Minister may by order alter the amount specified in *section [621](4)*.

(5) An order under *subsection (4)* may[ ...]<sup>397</sup> only be made, at a particular time (the “relevant time”), if it appears to the Minister to be appropriate to do so having regard to the changes in the value of money generally in the State that have occurred during the period beginning –

(a) on this Act’s passing, or

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<sup>397</sup> Correction of typographical error

(b) if the powers under *subsection (4)* have previously been exercised, immediately after their last previous exercise.

and ending at the relevant time.

(6) The priority conferred by *section [621](2)* shall apply only to those debts which, within the period of 6 months after the date of the advertisement by the liquidator for claims in at least 2 daily newspapers circulating in the district where the registered office of the company concerned is situated, either -

(a) have been notified to the liquidator; or

(b) have become known to the liquidator.

(7) In this section “relevant date” has the same meaning as it has in *section [621]*.

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**Unclaimed dividends and balances to be paid into a particular account**

**623.** (1) Where a company has been wound up, and is about to be dissolved, the liquidator shall, in such manner as may be prescribed, lodge to such account as is prescribed by the Minister the whole unclaimed dividends admissible to proof and unapplied or undistributable balances.

(2) An application to the court by a person claiming to be entitled to any dividend or payment out of a lodgment made in pursuance of subsection (1), and any payment out of such lodgment in satisfaction of such claim, shall be made in the prescribed manner.

(3) At the expiration of 7 years after the date of any lodgment made in pursuance of subsection (1), the amount of the lodgment remaining unclaimed shall be paid into the Exchequer, but where the court is satisfied that any person claiming is entitled to any dividend or payment out of the moneys paid into the Exchequer, it may order that that dividend or payment be made and the Minister for Finance shall issue such sum as may be necessary to provide for that payment.

(4) Where moneys invested or deposited at interest by a liquidator form part of the amount required to be lodged, pursuant to subsection (1), to the account referred to in that subsection, the liquidator shall realise the investment or withdraw the deposit and shall pay the proceeds into that account.]<sup>398</sup>

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<sup>398</sup> Substituted by point 112 of Seanad Committee Amendments.

## Chapter 8

### Liquidators

#### **Duty of liquidator to administer, distribute, etc., property of company.**

[624]. (1) Subject to *subsection (3)*, it shall be the duty of a liquidator to administer the property of the company to which he or she is appointed.

(2) For the purpose of *subsection (1)* “administer the property of the company” includes ascertaining the extent of the property of the company and, as appropriate -

(a) the collection and gathering in of the company’s property;

(b) the realisation of such property; and

(c) the distribution of such property,

in accordance with law.

(3) Subject to *section [559](3) to (5)*, the duties of a provisional liquidator shall be those duties provided in the order appointing him or her or any subsequent order of the court.

#### **How liquidator is to be described and validity of acts.**

[625]. (1) A liquidator shall be described by the style of “the liquidator” (or, in the case of a provisional liquidator, “the provisional liquidator”) of the particular company in respect of which he or she is appointed and not by his or her individual name.

(2) Subject to *section [621]*, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his or her appointment or qualification.

#### **Powers of provisional liquidators.**

[626]. (1) Where a provisional liquidator is appointed by the court, then, subject to *section [559](3) to (5)*, the provisional liquidator has such powers as the court orders.

(2) Where a provisional liquidator is appointed by the court, the court may place such limitations and restrictions upon the powers of any other officers of the company as it thinks fit.

**Liquidator's powers.**

[627]. The liquidator shall have the powers set out in each of the paragraphs of the Table to this section.

Table

*Legal proceedings, carrying on company's business, etc.*

1. Power to -

- (a) bring any action or other legal proceeding in the name and on behalf of the company;
- (b) defend any action or other legal proceeding in the name and on behalf of the company;
- (c) recommence and carry on the business of the company so far as may be necessary for the beneficial winding up thereof, where such business was not continuing at the date of the appointment of the liquidator or had ceased after such appointment;
- (d) continue to carry on the business of a company so far as may be necessary for the beneficial winding up thereof, where such business was continuing at the date of the appointment of the liquidator and had not subsequently ceased;
- (e) appoint a legal practitioner to assist the liquidator in the performance of his or her duties.

*Payment of certain creditors, compromise of certain claims, etc.*

2. Power to -

- (a) pay any classes of creditors in full;
- (b) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- (c) compromise –
  - (i) all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company; and
  - (ii) all questions in any way relating to or affecting the assets or winding up of the company,

on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

*Ascertainment of debts and liabilities, sale of property, etc.*

3. Power to –

(a) ascertain the debts and liabilities of the company;

(b) sell the property of the company by public auction or private contract, with, for the purposes of this subparagraph, power to –

(i) transfer the whole of the property to any company or other person;

(ii) sell the property in lots,

and, for the purpose of selling the company's land or any part of it, to carry out such sales by grant, conveyance, transfer, lease, sublease, or otherwise, and to sell any rent reserved on any such grant or any reversion expectant upon the determination of any such lease.

*Execution of certain documents, drawing of negotiable instruments, etc.*

4. Power to -

(a) do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(b) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.

*Proving claim in the case of contributory's bankruptcy, etc.*

5. Where any contributory has been adjudicated bankrupt or has presented a petition for arrangement with his or her creditors in pursuance of the Bankruptcy Act 1988, power to –

(a) prove, rank and claim in the bankruptcy or arrangement for any balance against the contributory's estate;  
and

(b) receive dividends in the bankruptcy or arrangement in respect of that balance,

as a separate debt due from the bankrupt or arranging debtor, and rateably with the other separate creditors.

*Obtaining of credit*

6. Power to obtain credit, whether on the security of the property of the company or otherwise.

*Taking out letters of administration, otherwise obtaining payment from contributory or debtor, etc.*

7. Power to –

(a) take out in the liquidator's name (that is the liquidator's name as it is to be styled under *section 626*) letters of administration to any deceased contributory or debtor; and

(b) do in the liquidator's name (that is the liquidator's name as it is to be so styled) any other act necessary for obtaining payment of any money due from a contributory or debtor or his or her estate which cannot be conveniently done in the name of the company,

and, in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself or herself.

*Security for costs and appointment of agents*

8. Power to -

(a) give security for costs in any proceedings commenced by the company or by the liquidator in the name of the company;

(b) appoint an agent to do any business which the liquidator is unable to do or that it is unreasonable to expect the liquidator to do, in person.

*Custody and control of property and disposal of perishables, etc.*

9. Power to -

(a) take into his or her custody or under his or her control all the property to which the company is or

appears to be entitled;

(b) dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of;

(c) do all such other things as may be necessary for the protection of the company's property.

*Residual power*

10. Power to do all such other things as may be necessary for winding up the affairs of the company and distributing its property.

**Summoning general meetings of the company, etc.**

[628]. The liquidator may summon -

- (a) general meetings of the company;
- (b) meetings of the creditors of the company; or
- (c) if there is a committee of inspection, meetings of that committee,

for the purpose of -

- (i) obtaining the sanction by resolution of members, creditors or the committee of inspection; or
- (ii) any other case in which he or she thinks fit to convene such a meeting (and provision for the convening of which by the liquidator is not specifically made otherwise by this Act).

**Notice to be given with respect to exercise of powers, restrictions on self-dealing, etc.**

[629]. (1) Subject to *subsection (2)*, where a liquidator exercises any power specified in *paragraph 1 or 2 of the Table to section [627]*, he or she shall, within 14 days after the date of such exercise, give notice of such exercise -

- (a) in the case of a winding up by the court or a creditors' voluntary winding up, to the committee of inspection or, if there is no such committee, to all of the creditors of the company who are known to the liquidator or who have been intimated to the liquidator; or
- (b) in the case of a members' voluntary winding up, to the members of the company.

(2) In relation to the exercise of a power specified in *paragraph 2(b) or (c) of the Table to section [627], subsection (1)* shall not apply if the amount of the claim or call to which the exercise of the power relates does not exceed €500.

(3) Subject to *subsection (9)*, the liquidator of a company shall not sell, by private contract, a non-cash asset of the requisite value to a person who is, or who, within 3 years prior to the date of commencement of the winding up, has been, an officer of the company unless the liquidator has given the following notice.

(4) That notice is at least 14 days' notice of the liquidator's intention to do so to all creditors of the company who are known to the liquidator or who have been intimated to the liquidator.

(5) In *subsection (3)* -

“officer”, in relation to a company, includes –

(a) a person connected, within the meaning of *section [220]*, with a director of the company, and

(b) a shadow director of the company;

“non-cash asset” and “requisite value” have the meanings given to them by *section [238]*.

(6) Subject to *subsection (9)*, the liquidator or any member of the committee of inspection of a company shall not, while acting as liquidator or member of such committee, either directly or indirectly, by himself or herself or any employer, partner, agent or employee, become purchaser of any part of the company's property.

(7) Subject to *subsection (9)*, where the liquidator carries on (in either of the 2 cases set out in *paragraph 1 of the Table to section [627]*) the business of the company, the liquidator shall not purchase goods for the carrying on of such business from any person whose connection with the liquidator is of such a nature as would result in the liquidator's obtaining any portion of the profit (if any) arising out of the transaction.

(8) Subject to *subsection (9)*, any purchase made in contravention of *subsection (3),(6) or (7)* may, on the application of any creditor or contributory of the company, be set aside by the court.

(9) *Subsection (3),(6),(7) or (8)*, as the case may be, does not apply if, prior to the sale or, as appropriate, the making of the purchase, there has been obtained for it the express sanction -

(a) in the case of a winding up by the court or a creditors' voluntary winding up, of the committee of inspection or, if there is no such committee, a majority in number and value of the creditors of the company who are known to the liquidator or, as the case may be, the officer, former officer or member making the purchase concerned or who have been intimated to the liquidator or, as the case may be, such officer, former officer or member; or

(b) in the case of a members' voluntary winding up, of a majority in number and value of the members of the company.

(10) The costs and expenses of obtaining the sanction referred to in *subsection (9)* shall be borne by the person in whose interest such sanction is sought and shall not be payable out of the company's property.

(11) Without prejudice to the generality of *section [559](4)* and *(5)*, where a provisional liquidator has been conferred by an order of the court with any of the powers specified in the *Table to section [627]*, being a power referred to (whether by express reference to that *Table* or otherwise) in a preceding subsection of this section, then "liquidator" in that particular subsection includes a provisional liquidator.

### **Restrictions in creditors' voluntary winding up and procedures in case of certain defaults.**

**[630].** (1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

(2) Subject to *subsection (3)*, the powers conferred on the liquidator by *section [627]* shall not be exercised, except with sanction of the court, during the period before the holding of the creditors' meeting under *section [587]*.

(3) *Subsection (2)* does not apply in relation to the exercise of a power specified in *paragraph 9* of the *Table to section [627]*.

(4) The liquidator shall attend the creditors' meeting held under *section [587]* and shall report to the meeting on any exercise by him or her of the powers under *section [627]* or *[631]*.

(5) If default is made -

(a) by the company in complying with *section [587](1),(2)* or *(6)*; or

(b) by the directors of the company in complying with *section [587](7)*,

the liquidator shall, within 14 days after the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.

(6) In *subsection (5)*, the "relevant day" means the day on which the liquidator was nominated by the company or the day on which he or she first became aware of the default, whichever is the later.

(7) If a liquidator, without reasonable excuse, fails to comply with any provision of this section, he or she shall be guilty of a category 3 offence.

**Power to apply to court for determination of questions or concerning exercise of powers.**

[631]. (1) Each of the following –

- (a) the liquidator or the provisional liquidator;
- (b) any contributory or creditor of the company;
- (c) the Director,

may apply to the court to determine any question arising in the winding up of a company (including any question in relation to any exercise or proposed exercise of any of the powers of the liquidator).

(2) The court, if satisfied that the determination of the question will be just and beneficial, may accede wholly or partially to such an 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 certified copy of an order made by virtue of this section -

- (a) annulling a resolution to wind up; or
- (b) staying the proceedings in a winding up,

(each of which orders the court is empowered by this section to make) shall forthwith be forwarded by the company concerned to the Registrar.

(4) If a company fails to comply with *subsection (3)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

**No lien over company's books, records, etc.**

[632]. (1) Without prejudice to *subsections (2) and (3)*, no person shall be entitled as against the liquidator or provisional liquidator of a company to –

- (a) withhold possession of any deed, instrument, or other document belonging to the company, or the accounting records, receipts, bills, invoices, or other papers of a like nature relating to the financial statements or trade, dealings or business of the company; or
- (b) claim any lien on a document or any other thing referred to in *paragraph (a)*.

(2) Where a mortgage, charge or pledge has been created by the deposit with a person of any such document or other paper as is referred to in *subsection (1)*, the production of the document or paper to the liquidator or provisional liquidator by the person

shall be without prejudice to the person's rights under the mortgage, charge or pledge (other than any right to possession of the document or paper).

(3) Where, by virtue of this section, a liquidator or provisional liquidator has possession of any document or papers of a receiver of the property of the company concerned or that such a receiver is entitled to examine, the liquidator or provisional liquidator shall, unless the court otherwise orders, make the document or papers available for inspection by the receiver at all reasonable times.

(4) Any person who, without just cause, withholds possession, in contravention of *subsection (1)*, of any such document or other paper as is referred to in that subsection shall be guilty of a category 3 offence.

### **Qualifications for appointment as liquidator or provisional liquidator – general.**

[633]. (1) Subject to *sections [634]* and *[635]*, a person shall not be qualified for appointment as a liquidator of a company unless he or she falls within a paragraph of the *Table* to this section.

(2) Nothing in this section shall prevent a person who –

(a) does not fall within *paragraph 1, 2, 3 or 4* of the *Table* to this section; and

(b) has made an application to the Supervisory Authority under and in accordance with *paragraph 5* of that *Table* (in *subsection (3)* referred to as a “relevant applicant”),

from acting as a liquidator pending the determination of that application.

(3) In addition to *subsection (2)*, nothing in this section shall prevent a relevant applicant from continuing to act as a liquidator in a winding up in relation to which he or she was appointed liquidator before the commencement of this section notwithstanding that the Supervisory Authority has refused his or her application made under and in accordance with *paragraph 5* of the *Table* to this section.

(4) In this section “liquidator” includes provisional liquidator.

#### Table

##### *First category - member of a prescribed accountancy body*

1. The person is a member of a prescribed accountancy body, within the meaning of *Part 15*, being a person who –

(a) holds a current practising certificate issued by that body; and

(b) is not prohibited by virtue of rules of that body or a direction, ruling or decision of that body, or any

disciplinary or professional practice committee of it, from acting as a liquidator.

*Second category - practising solicitor*

2. The person is a solicitor, being a solicitor who –

- (a) holds a current practising certificate issued by the Law Society of Ireland under the Solicitors Acts 1954 to 2002; and
- (b) is not prohibited by virtue of regulations made by the Law Society of Ireland, or a decision or order made by the Solicitors Disciplinary Tribunal or the court, under those Acts from acting as a liquidator.

*Third category - member of other professional body recognised by Supervisory Authority*

3. The person is a member of such professional body as the Supervisory Authority may from time to time recognise for the purposes of this section, being a person who –

- (a) is authorised for the time being by that professional body to pursue the particular activities that that body aims to promote or foster or as respects the pursuit of which by its members that body has been established to represent; and
- (b) is not prohibited by virtue of rules of that body or a direction, ruling or decision of that body, or any disciplinary or professional practice committee of it, from acting as a liquidator.

*Fourth category – person qualified under the laws of another EEA state*

4. The person is entitled under the laws of an EEA state (not being the State) to act as a liquidator in insolvency proceedings and the qualifications held by, or the circumstances otherwise relating to the person, that entitle him or her so to act are ones that, by virtue of any Community act, entitle him or her to act as a liquidator in the State.

*Fifth (and limited) category - person with practical experience of windings up and knowledge of relevant law*

5. The person -

- (a) having made application in that behalf to the Supervisory Authority in the prescribed form within 2 years after the commencement of this section;

and

- (b) paid the prescribed fee to the Supervisory Authority,

stands authorised for the time being by the Supervisory Authority (which authorisation the Supervisory Authority is,

by virtue of this section, empowered to grant) to be so appointed, such authorisation having been granted on the grounds that each of the following is satisfied:

- (i) the person has, prior to the commencement of this section, obtained adequate relevant experience of the winding up of companies and knowledge of the law applicable thereto by virtue of the person's either -

[

- (I) having been—

- (A) employed in relevant work by a person who at the relevant time fell (or, if this section had been in operation at that time, who would have fallen) within paragraph 1, 2 or 3;
- or

- (B) engaged on his or her own account in relevant work;

or

- (II) having practised in an EEA state (not being the State) as a liquidator;

- (ii) the person is, in the opinion of the Supervisory Authority, after consultation with the Director, a fit and proper person to act as a liquidator; and

- (iii) the person does not fall within paragraph 1, 2, 3 or 4.<sup>399</sup>

**Supplemental provisions in relation to *section [633]* (including requirements for professional indemnity cover).**

**[634].** (1) Subject to the preceding section, *subsection (3)* and *section [635]*, a person shall not be qualified for appointment as a liquidator of a company unless there is in place in relation to the person an indemnity, in such amount and on such terms as may from time to time be prescribed by regulations made by the Supervisory Authority, against losses and claims arising in respect of civil liability incurred by the person in respect of any act or omission by -

- (a) the person;

- (b) any servant or agent of the person; or

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<sup>399</sup> Substituted by point 113 of Seanad Committee Amendments.

(c) both of them,

in the conduct of the winding up of the company concerned.

(2) The reference in *subsection (1)* to an indemnity being in place in relation to a person is a reference to an indemnity being provided (against the losses and claims referred to in that subsection) by either of the following means:

(a) a policy of indemnity insurance being effected and maintained by the person with an insurance undertaking; or

(b) the person's participating, in a manner legally enforceable by the person, in an indemnity fund of a mutual nature that is recognised by the Supervisory Authority for the time being for the purposes of this section.

(3) *Subsection (1)* does not apply to a person as respects any winding up in relation to which he or she has been appointed liquidator before the commencement of this section.

(4) A person shall not act as liquidator of a company at a time when he or she is not qualified under *section [633]* or this section for appointment to that office.

(5) If, while acting as liquidator of a company, a person ceases to be qualified under *section [633]* or this section for appointment to that office, the person shall thereupon vacate his or her office.

(6) On vacating such office by reason of those circumstances, the person shall give notice in writing that he or she has vacated such office (by reason of those circumstances) –

(a) within 2 days after the date of vacating office, to –

(i) the Registrar;

(ii) the Director; and

(iii) if the person had been authorised pursuant to *paragraph 5 of the Table to section [633]* to be appointed as a liquidator - the Supervisory Authority;

and

(b) within 14 days after the date of vacating office, to –

(i) in the case of a winding up by the court, the court and –

(I) if a committee of inspection has been appointed - the members of that committee; or

(II) if no committee of inspection has been appointed - the creditors of the company;

(ii) in the case of a creditors' voluntary winding up –

(I) if a committee of inspection has been appointed - the members of that committee; or

(II) if no committee of inspection has been appointed - the creditors of the company;

or

(iii) in the case of a members' voluntary winding up - the members of the company.

(7) A person who contravenes *subsection (4) or (5)* shall be guilty of a category 2 offence.

(8) A person who contravenes *subsection (6)* shall be guilty of a category 3 offence.

(9) As respects a person who has been authorised under *paragraph 5 of the Table to section [633]* to be appointed a liquidator –

(a) if the person becomes qualified for appointment as a liquidator of a company by reason of another provision of that Table, the person's authorisation under that *paragraph 5* shall thereupon cease to have effect;

(b) the Supervisory Authority may withdraw or suspend (for such period and on such terms as it thinks fit) the person's authorisation under that *paragraph 5* if it is satisfied that the person is no longer sufficiently capable of acting as a liquidator or is no longer a fit and proper person to act as a liquidator.

(10) The Supervisory Authority may, to meet the cost of conducting such inquiries as may be necessary to be conducted for the purposes of its exercising the powers under *subsection (9)(b)*, levy, not more frequently than annually, such periodic charge as may be reasonable on any person acting as a liquidator, being a person who so acts by virtue of the person's being authorised under *paragraph 5 of the Table to section [633]*.

(11) In this section –

“insurance undertaking” means the holder of an authorisation under the European Communities (Non-Life Insurance) Regulations 1976 (S.I. No. 115 of 1976);

“liquidator” includes a provisional liquidator.

**Specific disqualification from appointment as liquidator or provisional liquidator.**

[635]. (1) None of the following persons shall be qualified to be appointed or act as liquidator of a company -

(a) a person who is, or who within the period of 24 months before the date of the commencement of the winding up has been, an officer or employee of the company;

(b) except with the leave of the court, a parent, spouse, civil partner, brother, sister or child of an officer of the company;

(c) a person who is a partner or in the employment of an officer or employee of the company;

(d) a person who is an undischarged bankrupt;

(e) a person who is not qualified by virtue of a preceding provision of this subsection for appointment as liquidator of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(2) References in *subsection (1)* to –

(a) a child of an officer shall be deemed to include a child of the officer's civil partner who is ordinarily resident with the officer and the civil partner;

(b) an officer or employee of the company include a statutory auditor of the company.

(3) An application for leave under *subsection (1)(b)* shall be supported by such evidence as the court may require.

(4) If, while acting as liquidator of a company, a person ceases to be qualified to so act by virtue of *subsection (1)*, the person shall thereupon vacate his or her office.

(5) On vacating such office by reason of those circumstances, the person shall give notice in writing that he or she has vacated such office (by reason of those circumstances) –

(a) within 2 days after the date of vacating office, to –

(i) the Registrar;

(ii) the Director; and

(iii) if the person had been authorised pursuant to *paragraph 5 of the Table to section 634* to be appointed as a liquidator - the Supervisory Authority,

and

(b) within 14 days after the date of vacating office, to –

(i) in the case of a winding up by the court, the court and –

(I) if a committee of inspection has been appointed - the members of that committee; or

(II) if no committee of inspection has been appointed - the creditors of the company;

(ii) in the case of a creditors' voluntary winding up –

(I) if a committee of inspection has been appointed - the members of that committee; or

(II) if no committee of inspection has been appointed - the creditors of the company;

or

(iii) in the case of a members' voluntary winding up - the members of the company.

(6) A person who -

(a) acts as a liquidator of a company when he or she is not qualified by virtue of *subsection (1)* to so act; or

(b) contravenes *subsection (4)*,

shall be guilty of a category 2 offence.

(7) A person who contravenes *subsection (5)* shall be guilty of a category 3 offence.

(8) *Subsections (1) to (7)* shall not apply to a winding up commenced before 1 August 1991.

(9) In this section "liquidator" includes a provisional liquidator.

#### **Appointment and removal in a members' voluntary winding up.**

[636]. (1) In *paragraphs (a) to (c) of subsection (2)* "liquidator" shall be deemed to include the one or more liquidators appointed by the company in exercise of the powers under any such paragraph.

(2) Subsequent to the appointment of a liquidator of a company under *section [583]* in a members' voluntary winding up, the company, in general meeting, may, at a meeting convened for that purpose –

(a) remove the liquidator;

(b) appoint a liquidator to replace or act with the existing liquidator; or

(c) appoint a liquidator to fill a vacancy in the office of liquidator.

(3) Notwithstanding anything in *Part 4*, a general meeting of the company for the purpose of –

(a) *subsection (2)(a) or (b)*, may be convened, on 10 days' notice to the members of it, by –

(i) any member of it with the written authority of not less than one tenth in number of the members; or

(ii) an existing liquidator;

or

(b) *subsection (2)(c)* may be convened, on 10 days' notice to the members of it, by –

(i) any member of it with the foregoing written authority;

(ii) an existing liquidator; or

(iii) any contributory.

(4) The powers conferred on the company by *subsection (2)* shall be subject to any order the court may make with regard to the matter on application to it by any contributory or an existing liquidator.

(5) *Section [218]* (service of notices) shall apply to a notice of a meeting given by a member, liquidator or contributory under *subsection (3)* as it applies to a notice by a company or any of its officers to its members.

(6) The meeting shall be held in a manner provided by this Act or the company's constitution or in such manner as may, on application by any contributory, member or any existing liquidator, be determined by the court.

**Appointment and removal in a creditors' voluntary winding up.**

[637]. (1) This section applies at any time subsequent to the appointment of a liquidator of a company under *section [588]* in a creditors' voluntary winding up.

(2) In *paragraphs (a) to (c) of subsection (4)* "liquidator" –

(a) does not include a person whom the court has directed to be, or whom the court has appointed to be, liquidator of the company under *section [588](5)*;

(b) shall be deemed to include the one or more liquidators appointed by the creditors in exercise of the powers under any such paragraph.

(3) Where this section applies, the creditors may, at a meeting convened for that purpose, by resolution of a majority, in value only, of the creditors present personally or by proxy and voting on the resolution, exercise the following powers.

(4) Those powers of the creditors are to –

(a) remove the liquidator;

(b) appoint a liquidator to replace or act with the existing liquidator;

or

(c) appoint a liquidator to fill a vacancy in the office of liquidator.

(5) A meeting of the creditors of the company for the purpose of *subsection (3)* may be convened, on 10 days' notice to the creditors, by –

(a) any creditor of it with the written authority of not less than one tenth in value of the creditors; or

(b) an existing liquidator.

(6) The powers conferred on the creditors by *subsection (3)* shall be subject to any order the court may make with regard to the matter on application to it by any creditor or an existing liquidator.

**Appointment and removal by the court.**

[638]. (1) In any winding up, the court may, on the application by a member, creditor, liquidator or the Director or on its own motion –

(a) appoint a liquidator if from any cause whatever there is no liquidator acting; or

(b) on cause shown, remove a liquidator and appoint another liquidator.

(2) Where the court makes an order under *subsection (1)*, it may give such consequential directions, including directions as to the delivery and transfer of the seal, books, records and any property of the company, as it thinks fit.

**Consent to act.**

[639]. (1) The appointment of a liquidator (other than a provisional liquidator) shall be of no effect unless the person nominated has, prior to his or her appointment, signified his or her written consent to the appointment.

(2) A provisional liquidator shall not be appointed unless the court is satisfied that the person nominated for such appointment has, prior to his or her appointment, signified his or her consent to the appointment.

**Position when there is more than one liquidator.**

[640]. (1) If more than one liquidator is appointed, the court or meeting appointing those liquidators, shall declare or resolve whether any thing by this Act required or authorised to be done by the liquidators is to be done by all or any one or more of the

persons appointed.

(2) In default of such declaration or resolution, those things may be performed by any number of the liquidators but, in any case, by not less than 2 of them.

**Resignation of liquidator.**

[641]. (1) In any winding up, a liquidator may resign from office.

(2) Where a liquidator resigns, he or she shall give notice in writing of that fact, within 2 days after the date of resigning, to the Registrar and the Director and, within 14 days after the date of resigning -

(a) in the case of a winding up by the court, to the court and –

(i) if a committee of inspection has been appointed – to the members of that committee; or

(ii) if no committee of inspection has been appointed – to the creditors of the company;

(b) in the case of a creditors' voluntary winding up –

(i) if a committee of inspection has been appointed – to the members of that committee; or

(ii) if no committee of inspection has been appointed – to the creditors of the company;

or

(c) in the case of a members' voluntary winding up – to the members of the company.

(3) If a liquidator fails, without reasonable excuse, to comply with *subsection (2)* he or she shall be guilty of a category 3 offence.

**Prohibition on rewards for appointment.**

[642]. Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to –

(a) securing his or her own appointment or nomination as the company's liquidator; or

(b) securing or preventing the appointment or nomination of some person other than himself or herself as the company's liquidator,

shall be guilty of a category 2 offence.

**Notifications and filings of appointments and removals.**

[643]. (1) The chairperson of any meeting at which a liquidator is appointed or removed shall, following the meeting, forthwith deliver to the liquidator notice in writing of the liquidator's appointment or removal, unless the liquidator or his or her duly authorised representative is present at the meeting where the resolution concerned was passed.

(2) In default of election of a chairperson by the meeting referred to in *subsection (1)*, the person who shall be chairperson of that meeting shall be the person who was the signatory or the first signatory, as the case may be, on the notice by which the meeting was called.

(3) The chairperson of a meeting referred to in *subsection (1)* at which a liquidator is removed shall, following the meeting, forthwith deliver to the Registrar notice of the removal in the prescribed form.

(4) *Subsections (5) to (9)* have effect in respect of -

(a) an appointment of a liquidator in a winding up other than the initial appointment of a liquidator in a winding up;

and

(b) a removal of a liquidator that the court orders in any winding up.

(5) The liquidator, following receipt of notice of his or her appointment (other than an appointment made by the court), shall forthwith deliver to the Registrar notice of his or her appointment in the prescribed form.

(6) The Registrar shall forward a copy of such notice to the Director.

(7) Where an order is made appointing or removing a liquidator -

(a) the applicant for the order; or

(b) in a case where the order is made by the court of its own motion, such officer of the court as may be prescribed,

shall, following the making of the order, forthwith deliver or cause to be delivered to the liquidator notice in writing of the liquidator's appointment or removal, unless the liquidator or his or her duly authorised representative is present in court when the order is made.

(8) Where an order is made appointing or removing a liquidator, such officer of the court as may be prescribed shall, following the making of the order, forthwith cause the Registrar to be furnished with such particulars of the order as may be prescribed.

(9) The Registrar shall forward a copy of such particulars to the Director.

(10) Subject to *subsection (11)*, a person who fails to comply with a provision of this section shall be guilty of a category 3

offence.

(11) *Subsection (10)* shall not apply to the Registrar or any officer of the court prescribed for the purposes of *subsection (7)* or *(8)*.

**Custody of books and property upon vacation of office.**

[644]. (1) This section applies where a person vacates the position of liquidator of a company (the “former liquidator”) whether such vacation is by reason of his or her having -

- (a) ceased to be qualified to act as a liquidator of the company;
- (b) been removed as liquidator; or
- (c) resigned as liquidator.

(2) Where this section applies and no person remains appointed to act as liquidator of the company, the former liquidator shall retain custody of -

- (a) the seal, books, records, and any property of the company in his or her possession or control; and
- (b) the books and records kept by him or her as liquidator,

[(which seal]<sup>400</sup>, property, documents or other things are referred to in this section as the “relevant items”) until -

- (i) a new liquidator is appointed to the company - whereupon the former liquidator shall deliver custody of the relevant items to the new liquidator; or
- (ii) directed by the court, upon the application of the former liquidator, the Director of Corporate Enforcement or a member or creditor of the company, to effect delivery or disposal of the relevant items as the court thinks fit.

(3) The delivery of any of the relevant items pursuant to *subsection (2)* shall not prejudice any lien which a liquidator may have over it.

(4) A person who fails to comply with this section without lawful excuse shall be guilty of a category 3 offence.

**Provisional liquidator’s remuneration.**

[645]. (1) A provisional liquidator is entitled to receive such remuneration as is fixed by the court.

(2) *Section [648]* applies with respect to the fixing of such remuneration and otherwise supplements this section.

**Liquidator's remuneration – procedure for fixing liquidator's entitlement thereto.**

[646]. (1) A liquidator, other than a provisional liquidator, has an entitlement to remuneration upon the terms agreed, fixed or otherwise set in the manner specified in *subsection (2)* and the terms upon which the liquidator has, in accordance with that subsection, such an entitlement may be expressed to be -

- (a) by way of a relevant percentage;
- (b) by reference to time expended in the conduct of the winding up; or
- (c) otherwise by reference to any method or thing.

(2) The terms upon which the liquidator has an entitlement to remuneration shall be –

(a) where there is a committee of inspection, such terms as have been agreed in writing between the liquidator and the committee of inspection; or

(b) in a winding up by the court or a creditors' voluntary winding up, where –

- (i) there is no committee of inspection; or
- (ii) the liquidator and the committee of inspection fail to agree,

such terms as have been approved by resolution of the creditors; or

(c) in a members' voluntary winding up, such terms as have been approved by resolution of the members of the company in general meeting; or

(d) where the creditors or members, as the case may be - having been requested to do so by the liquidator - fail to pass a resolution in accordance with *paragraph (b)* or *(c)*, such terms as have been fixed by the court.

(3) Before the terms upon which a liquidator has an entitlement to remuneration have been agreed, approved or fixed, as the case may be, in accordance with *subsection (2)*, the liquidator shall, as appropriate –

(a) cause particulars in writing of the terms upon which he or she seeks such entitlement to be furnished -

- (i) in a case to which *subsection (2)(a)* applies, to the committee of inspection;

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<sup>400</sup> Substituted by point 114 of Seanad Committee Amendments.

(ii) in a case to which *subsection (2)(b)* applies, to the creditors;

(iii) in a case to which *subsection (2)(c)* applies, to the members of the company;

or

(b) in a case to which *subsection (2)(d)* applies, include, as part of his or her application to the court, particulars of the terms upon which he or she seeks such an entitlement.

(4) A liquidator shall, as soon as is practicable after his or her appointment and in accordance with *subsection (2)*, seek the agreement or, as the case may be, approval (or, as the case may require, the fixing) of the terms upon which he or she has an entitlement to remuneration.

(5) Subject to *subsection (6)*, the terms upon which a liquidator has an entitlement to remuneration may be varied by –

(a) a subsequent agreement between the liquidator and the committee of inspection;

(b) approval thereto (given by the means referred to in *subsection (2)(b)* or *(c)*, as appropriate) of the creditors or members; or

(c) a subsequent order made by the court on application to it by the liquidator,

as the case may be.

(6) No such variation may, without the consent of the liquidator, reduce the entitlement of the liquidator to remuneration for work that has already been performed.

(7) This section is subject to *sections [647]* and *[648]*.

**Liquidator's entitlement to receive payment where entitlement to remuneration exists.**

**[647].** (1) This section –

(a) applies where the liquidator's entitlement to remuneration exists by virtue of the terms in respect thereof having been agreed, fixed or otherwise set in the manner specified in *section [646]*; and

(b) is subject to *section [648]*.

(2) A liquidator shall be entitled to receive payment in respect of his or her remuneration (whether for the entire or any portion of his or her services in the winding up, or by way of a payment on account) provided the amount sought to be received in that behalf has –

(a) where there is a committee of inspection, been approved by the committee of inspection; or

(b) in a winding up by the court or a creditors' voluntary winding up, where –

(i) there is no committee of inspection; or

(ii) the committee of inspection does not approve the amount,

been approved by resolution of the creditors; or

(c) in a members' voluntary winding up, been approved by resolution of the members of the company in general meeting; or

(d) where the creditors or members, as the case may be - having been requested to do so by the liquidator - fail to pass a resolution in accordance with *paragraph (b) or (c)*, been fixed by the court or such person as the court may designate for that purpose.

(3) Before the amount of remuneration sought to be [...] <sup>401</sup> received has been agreed, approved or fixed, as the case may be, in accordance with *subsection (2)*, the liquidator shall, as appropriate –

(a) cause the prescribed particulars in respect of that amount to be furnished -

(i) in a case to which *subsection (2)(a)* applies, to the committee of inspection;

(ii) in a case to which *subsection (2)(b)* applies, to the creditors;

(iii) in a case to which *subsection (2)(c)* applies, to the members of the company;

or

(b) in a case to which *subsection (2)(d)* applies, include, as part of his or her application to the court, prescribed particulars in respect of that amount.

**Supplemental provisions in relation to sections [646] and [647].**

[648]. (1) The terms upon which a liquidator has an entitlement to remuneration, as agreed, fixed or otherwise set in accordance with *section [646]*, may include provision for reference to arbitration of any dispute that may arise as to the amount of remuneration to which the liquidator is thereby entitled under *section [647]*.

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<sup>401</sup> Correction of typographical error from Bill as initiated

(2) If the foregoing terms do not include a provision of the foregoing kind, the liquidator and -

(a) where the case is one of a winding up by the court or a creditors' voluntary winding up, the creditors acting by resolution passed at a meeting of the creditors for the purpose; or

(b) where the case is one of a members' voluntary winding up, the members of the company acting by resolution passed at a meeting of the company for the purpose,

may agree to refer to arbitration any dispute as to the amount of remuneration to which the liquidator is entitled under *section [647]*.

(3) In an arbitration of a dispute as to the amount of remuneration to which a liquidator is entitled under *section [647]*, the matters specified in *subsection (9)* shall be taken into account by the arbitrator.

(4) Not later than 28 days after -

(a) the date on which an agreement or approval has been made or given in accordance with *section [646](2)(a),(b)* or *(c)*, as the case may be, in respect of such terms; or

(b) the date on which any variation referred to in *section [646](5)* has been made of such terms,

any creditor or member of the company concerned may apply to the court to review the terms upon which the liquidator has an entitlement to remuneration as so agreed, approved or varied, and, on the making of such an application, the court may, as it thinks fit -

(i) confirm the terms as so agreed, approved or varied; or

(ii) alter those terms.

(5) Not later than 28 days after the date on which an agreement or approval has been made or given in accordance with *section [647](2)(a),(b)* or *(c)*, as the case may be, in respect of an amount of remuneration of a liquidator, any creditor or member of the company concerned may apply to the court to review that amount as so agreed or approved and, on the making of such an application, the court may, as it thinks fit -

(a) confirm that amount as so agreed or approved; or

(b) alter that amount.

(6) If, on an application under *subsection (4)* or *(5)* -

(a) the court does not vary, in a manner less favourable to the liquidator, the terms of the liquidator's entitlement to

remuneration or, as the case may be, reduce an amount of his or her remuneration, the applicant shall bear the costs, fees and expenses of the application; or

(b) the court does vary, in a manner less favourable to the liquidator, the terms of the liquidator's entitlement to remuneration or, as the case may be, reduce an amount of his or her remuneration, the court may make such order as it deems fit as to the costs, fees and expenses of the application.

(7) For the purpose of holding a meeting in accordance with *section [646]* or *[647]* or this section, the liquidator may convene a meeting of the creditors of the company, the members of the company or the committee of inspection, as the case may be.

(8) Where a company is ordered to be wound up by the court upon grounds other than those specified in *section [569](1)(d)* (company unable to pay its debts) then, upon it being established to the satisfaction of the court that the company is not insolvent, the provisions of *sections [646]* and *[647]* and this section that are applicable to a members' voluntary winding up shall, where the court so directs, apply to that company.

(9) In –

(a) fixing the amount of a provisional liquidator's remuneration under *section [645]*; or

(b) the agreeing, approval, fixing or review under *section [646]* or *[647]* or this section, as the case may be, of -

(i) the terms of a liquidator's entitlement to remuneration, or

(ii) the amount of a liquidator's remuneration

the following shall be taken into account by the court, the committee of inspection, the creditors or, as the case may be, the members -

(i) the time properly required to be given by the person as liquidator and by his or her assistants in attending to the company's affairs;

(ii) the complexity (or otherwise) of the case;

(iii) any respects in which, in connection with the company's affairs, there falls on the liquidator any responsibility of an exceptional kind or degree;

(iv) the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his or her duties; and

(v) the value and nature of the property with which the liquidator has to deal.

(10) In *sections [645]* to *[647]* and this section "remuneration" includes remuneration for services in the winding up performed

by the liquidator personally and by his or her assistants on his or her authority.

**Disclosure of interest by creditors etc. at creditors' meeting.**

[649]. (1) Where, at a meeting of creditors, a resolution is proposed for the appointment of a liquidator, any creditor who has a connection with the proposed liquidator shall, before the resolution is put, make such connection known to the chairperson of the meeting who shall disclose that fact to the meeting, together with particulars thereof.

(2) *Subsection (1)* shall also apply to any person at the meeting, being a representative of a creditor and entitled to vote on the resolution on his or her behalf.

(3) Where the chairperson of a meeting of creditors has any such connection as is mentioned in *subsection (1)*, he or she shall disclose that fact to the meeting, together with particulars thereof.

(4) For the purposes of this section, a person has a connection with a proposed liquidator if he or she is -

(a) a parent, spouse, civil partner, brother, sister or child of; or

(b) employed by, or a partner of,

the proposed liquidator.

(5) A person who fails to comply with this section shall be guilty of a category 3 offence.

(6) In *subsection (4)* the reference to a child of the proposed liquidator shall be deemed to include a reference to a child of the proposed liquidator's civil partner who is ordinarily resident with the proposed liquidator and the civil partner.

(7) In exercising its jurisdiction under *section [588]* or *[638]* (which relate to the appointment or removal of a liquidator), the court may have regard to any failure to comply with this section.

**Duty of liquidators to include certain information in returns, etc.**

[650]. (1) In this section "periodic return" includes a periodic account, a periodic abstract and a periodic statement.

(2) Where a liquidator of a company is obliged by or under this Act to make a periodic return in relation to his or her activities as liquidator, he or she shall incorporate in such return a report as to whether, at the date of such return, any past or present director or other officer, or any member, of the company is a person -

(a) in respect of whom a declaration has been made under any provision of this Act that he or she should be personally

liable for all or any part of the debts of a company; or

(b) who is, or is deemed to be, subject to a disqualification order under *Part 14* or a declaration of restriction under *Chapter 3* of that Part.

(3) A liquidator who contravenes *subsection (2)* shall be guilty of a category 3 offence.

**Penalty for default of liquidator in making certain accounts and returns.**

[651]. Where a liquidator is in default in relation to the making or filing of a periodic account, abstract, statement or return in pursuance of any provision of this Act he or she shall be guilty of a category 4 offence.

**Enforcement of duty of liquidator to make returns.**

[652]. (1) *Subsection (2)* applies if a liquidator of a company, having made default in filing, delivering or making any return, account or other document, or in giving any notice which a liquidator is by law required to file, deliver, make or give, fails to make good the default within 14 days after the date of service on him or her of a notice requiring him or her to do so or such greater period of time as may be specified in the notice .

(2) Where this subsection applies, the court may, on an application made for the purpose, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) Any contributory or creditor of the company, the Director or the Registrar may make an application for the purposes of this section.

(4) The order under this section may provide that all costs of and incidental to the application shall be borne by the liquidator.

(5) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on liquidators in respect of any such default as is mentioned in *subsection (1)*.

**Director's power to examine books and records.**

[653]. (1) In this section -

“appropriate person”, in relation to the company referred to in *subsection (3)*, means any of the following:

(a) the company;

(b) irrespective of the time at which he or she holds or held such status (but subject, in the case of *subparagraph (iii)*, to *subsection (2)*) –

- (i) a liquidator of the company;
- (ii) an officer or statutory auditor of the company; or
- (iii) a receiver appointed to any property of the company;

“books and records” means the books and records of the company and, in addition, in the case of a request under *subsection (3)* made of a liquidator, statutory auditor or receiver, the books and records of the liquidator, statutory auditor or receiver;

“liquidator” includes a provisional liquidator.

(2) For the avoidance of doubt, the powers under this section do not extend to a case in which a receivership alone has been conducted in relation to any property of the company (which case is governed by *section [446]* (Director may request production of receiver’s books)).

(3) Where a company is being wound up or has been dissolved, the Director may –

- (a) on his or her own motion; or
- (b) where a complaint is made to the Director by a member, contributory or creditor of the company,

request (specifying the reason why the request is being made) an appropriate person to produce to the Director the books and records for examination, and the appropriate person shall comply with the request.

(4) In the case of a request of a liquidator or a receiver under *subsection (3)*, the request may relate to a particular winding up or receivership process or to all windings up or receiverships conducted by the liquidator or receiver.

(5) An appropriate person shall -

- (a) answer any questions of the Director concerning the content of the books and records requested to be produced under *subsection (3)*;
- (b) if he or she is a liquidator or receiver, answer any questions of the Director concerning the conduct of a particular winding up or receivership, or all windings up or receiverships conducted by the appropriate person, as the case may be; and
- (c) give to the Director such assistance in the matter as the appropriate person is reasonably able to give.

(6) An appropriate person shall give to the Director such access and facilities as are necessary for inspecting and taking copies of books and records requested to be produced by him or her under *subsection (3)*.

(7) A request under *subsection (3)* may not be made in respect of books and records relating to a winding up or receivership that has concluded more than 6 years prior to the date of the request but nothing in this subsection is to be read as requiring a liquidator to keep any books or records for a period longer than that specified in *section [696](2)*.

(8) An appropriate person who –

(a) fails to comply with a request under *subsection (3)*;

(b) fails to answer any question under *subsection (5)(a)* or *(b)*;

(c) fails to give the Director the assistance referred to in *subsection (5)(c)*; or

(d) without lawful excuse, fails to give the Director the access or facilities referred to in *subsection (6)*,

shall be guilty of a category 2 offence.

(9) Nothing in this section shall be taken as excluding or restricting any statutory rights of the Government, a Minister of the Government or a person acting under the authority of the Government or a Minister of the Government, or the powers of any person under *Part 13*.

## Chapter 9

### Contributories

#### **Liability of contributory.**

[654]. (1) The liability of a contributory shall create a debt accruing due from him or her at the time when his or her liability commenced, but payable at the times when calls are made for enforcing the liability.

(2) An action to recover a debt created by this section shall not be brought after the expiration of 12 years after the date on which the cause of action accrued.

#### **Liability as contributories of past and present members.**

[655]. (1) Subject to *subsection (2)*, in the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges

and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) The following qualifications apply in relation to *subsection (1)*:

- (a) no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he or she is liable as a present or past member;
- (b) a past member shall not be liable to contribute if he or she has ceased to be a member for one year or more before the commencement of the winding up;
- (c) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he or she ceased to be a member;
- (d) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (e) a sum due to any member of the company, in his or her character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself or herself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

#### **Settlement of list of contributories.**

[656]. (1) Subject to *subsection (3)*, in the event of a company being wound up, the liquidator shall, as soon as is reasonably practicable, settle a list of contributories.

(2) In a winding up the court shall, for the purpose of the foregoing function of the liquidator or any other relevant purpose of this Part, have the same power as it has under *section [173]*, in the circumstances generally of a company, to rectify the register of members.

(3) Where it appears to the liquidator that it will not be necessary to make calls on or adjust the rights of contributories, the liquidator may dispense with the settlement of a list of contributories.

(4) In settling the list of contributories, the liquidator shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

#### **Power to make calls.**

[657]. (1) The liquidator may, either before or after he or she has ascertained the sufficiency of the assets of the company, make

calls on all or any of the contributories for the time being on the list of contributories to the extent of their liability, for payment of any money which the liquidator considers necessary –

- (a) to satisfy the debts and liabilities of the company;
- (b) to satisfy the costs, charges and expenses of the winding up; and
- (c) for the adjustment of the rights of the contributories among themselves,

and may make a demand for payment of any calls so made.

(2) Without derogating from the power of the liquidator under *subsection (1)* to make such calls, the court, upon the application of the liquidator made on notice to the contributory or contributories concerned, may, either before or after it has ascertained the sufficiency of the assets of the company, exercise the following power in relation to calls.

(3) That power is to make calls on all or any of the contributories for the time being on the list of contributories to the extent of their liability, for payment of any money which the court considers necessary -

- (a) to satisfy the debts and liabilities of the company;
- (b) to satisfy the costs, charges and expenses of the winding up; and
- (c) for the adjustment of the rights of the contributories among themselves,

and may make an order for payment of any calls so made.

(4) In making a call under this section, the court or liquidator may take into consideration that some of the contributories may partly or wholly fail to pay the call.

#### **Adjustment of rights of contributories.**

[658]. The liquidator shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

#### **Payment of debts due by contributory to the company and extent to which set-off allowed.**

[659]. (1) The court may make an order requiring any contributory for the time being on the list of contributories to pay, in a manner directed by the order, any money due from him or her or from the estate of the person whom he or she represents to the company, exclusive of any money payable by him or her or the estate by virtue of any call in pursuance of this Act.

(2) When all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him or her by way of set-off against any subsequent call.

**Order in relation to contributory to be conclusive evidence.**

[660]. (1) An order made by the court in relation to a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other relevant matters stated in such an order shall be taken to be truly stated as against all persons and in all proceedings.

**Liability in case of death of contributory.**

[661]. (1) If a contributory dies, either before or after he or she has been placed on the list of contributories, his or her personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his or her liability and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for the administration of the estate of the deceased contributory or otherwise for compelling payment there out of the money due.

**Civil Liability Act 1961 not affected.**

[662]. Nothing in *section [661]* or any other provision of this Part affects any restriction under the Civil Liability Act 1961 as to the time within which proceedings are maintainable against the estate of a deceased person.

**Bankruptcy of contributory.**

[663]. (1) If a contributory becomes bankrupt, either before or after he or she has been placed on the list of contributories, the following provisions apply:

(a) the assignee in bankruptcy -

(i) shall represent the bankrupt for all the purposes of the winding up, and shall be a contributory accordingly; and

(ii) may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his or her

liability to contribute to the assets of the company;

and

(b) there may be proved against the estate of the bankrupt the estimated value of his or her liability to future calls as well as calls already made.

(2) Nothing in this section affects, to the extent and under the circumstances allowable under –

(a) the general law pertaining to the application of different jurisdictions' laws and procedures;

(b) any Community act; or

(c) any enactment giving the force of law to an agreement to which the State is a party,

the enforcement, in a winding up or other insolvency proceedings outside the State, of any liability of an individual who is a contributory.

**Corporate insolvency of contributory.**

[664]. (1) If a contributory is a company which is being wound up, either voluntarily or by the court (and whether its winding up commences before or after it has been placed on the list of contributories), the following provisions apply:

(a) the liquidator of the contributory company -

(i) shall represent it for all the purposes of the winding up, and shall be a contributory accordingly; and

(ii) may be called on to admit to proof in the contributory company's winding up or otherwise to allow to be paid out of its assets in due course of law, any money due from the contributory company in respect of its liability to contribute to the assets of the company;

and

(b) there may be proved against the contributory company the estimated value of its liability to future calls as well as calls already made.

(2) In *subsection (1)* the first reference to a company and each reference to a contributory company is a reference to any of the following:

(a) a private company limited by shares;

(b) a designated activity company;

- (c) a public limited company;
- (d) a company limited by guarantee;
- (e) an unlimited company;
- (f) an unregistered company.

(3) Nothing in this section affects, to the extent and under the circumstances allowable under –

- (a) the general law pertaining to the application of different jurisdictions' laws and procedures;
- (b) any Community act; or
- (c) any enactment giving the force of law to an agreement to which the State is a party,

the enforcement, in a winding up or other insolvency proceedings outside the State, of any liability of a body or undertaking that is a contributory.

**Winding up of company that had been an unlimited company before re-registration.**

[665]. In the event of the winding up of a company that had been an unlimited company before it re-registered under this Act as a private company limited by shares, the following provisions have effect:

- (a) notwithstanding *section [1275](2)(a)*, a past member of the company who was a member thereof at the time of re-registration shall, if the winding up commences within the period of 3 years beginning after the day on which the company is re-registered, be liable to contribute to the assets of the company in respect of its debts and liabilities contracted before that time;
- (b) where no persons who were members of the company at the time of re-registration are existing members of the company, a person who, at that time was a present or past member thereof shall, subject to *section [1275](2)(a)* and to *paragraph (a)*, but notwithstanding *section [1275](2)(c)* be liable to contribute in the foregoing manner despite the fact that the existing members have satisfied the contributions required to be made by them in pursuance of this Act; and
- (c) notwithstanding *section [655](2)(a)*, there shall be no limit on the amount which a person who, at the time of re-registration, was a past or present member of the company, is liable to contribute in the foregoing manner.

## Chapter 10

### Committee of inspection

#### **Appointment of committee of inspection in court ordered winding up.**

[666]. (1) When a winding-up order has been made by the court, the liquidator may and, if directed to do so by a creditor or creditors representing not less than one-tenth in value of the creditors of the company shall, summon a meeting of the creditors of the company for the purpose of determining –

(a) whether or not a committee of inspection is to be appointed; and

(b) who are to be the members of the committee if so appointed.

(2) At a meeting summoned in accordance with *subsection (1)*, the creditors may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons appointed under this subsection.

(3) If such a committee is appointed the company may, at any time subsequently in general meeting, appoint not more than 3 persons to act as members of the committee, provided that the number of members of the committee shall not at any time exceed eight.

(4) The creditors may resolve that all or any of the persons appointed under *subsection (3)* by the company ought not to be members of the committee of inspection, and if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court, on application to it, otherwise directs, be qualified to act as members of the committee.

(5) On an application to the court under *subsection (4)*, the court may appoint other persons to act as members of the committee of inspection in place of the persons mentioned in the resolution concerned.

(6) Where a meeting of the creditors or members of the company is being summoned under this section, the notice of the meeting shall indicate who are proposed to be appointed as the members of the committee of inspection by the meeting concerned.

#### **Appointment of committee of inspection in a creditors' voluntary winding up.**

[667]. (1) The creditors of the company at the meeting to be held in pursuance of *section [587]*, or at any subsequent meeting, may appoint a committee of inspection consisting of not more than 5 persons appointed under this subsection.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint not more than 3 persons to act as members of the committee, provided that the number of members of the committee shall not at any time exceed eight.

(3) The creditors may resolve that all or any of the persons appointed under *subsection (2)* by the company ought not to be members of the committee of inspection, and if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court, on application to it, otherwise directs, be qualified to act as members of the committee.

(4) On an application to the court under *subsection (3)*, the court may appoint other persons to act as members of the committee of inspection in place of the persons mentioned in the resolution concerned.

**Constitution and proceedings of committee of inspection.**

[668]. (1) A committee of inspection appointed in pursuance of this Act (the “committee”) shall meet at such times as they from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as and when he or she thinks necessary.

(2) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee is present.

(3) A member of the committee may resign by notice in writing signed by him or her and delivered to the liquidator.

(4) A person’s office as member of the committee becomes vacant if and upon any of the following happening:

(a) the person is adjudicated bankrupt or compounds or arranges with his or her creditors;

(b) the person is absent from 2 consecutive meetings of the committee without the leave of those persons who, together with himself or herself, were appointed as members of the committee by the creditors or, as the case may be, members of the company.

(5) A member of the committee may be removed by resolution at a meeting of -

(a) creditors of the company if he or she was appointed as member of the committee by those creditors; or

(b) the company if he or she was appointed as member of the committee by the company,

being a meeting of which 7 days’ notice has been given and which notice stated the object of the meeting.

(6) Subject to *subsection (7)*, on a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of –

(a) creditors of the company; or

(b) if the person who vacated office had been appointed by the company, of the company,

to fill the vacancy, and the meeting may, by resolution, reappoint the person who vacated office or appoint another person to fill the vacancy.

(7) If the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for a vacancy occurring in the committee to be filled, he or she may apply to the court and the court may make an order that the vacancy shall not be filled or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than 2, may act notwithstanding any vacancy in the committee.

(9) A member of the committee shall not make a profit from the winding up, except with the leave of the court or the sanction of—

(a) in the case of a members' voluntary winding up, a resolution of the company; or

(b) in the case of a creditors' voluntary winding up, a resolution of the creditors of the company.

(10) At a meeting of creditors, a resolution shall, for the purposes of this section (other than *subsection (9)(b)*), be deemed to be passed when a majority in number of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution.

## Chapter 11

### Court's powers

#### **Power to annul order for winding up or to stay winding up.**

[669]. (1) At any time after an order for winding up is made, the court -

(a) on the application of the liquidator or any creditor or contributory; and

(b) on proof to the satisfaction of the court that the order for winding up ought to be annulled,

may make an order annulling the order for winding up on such terms and conditions as the court thinks fit.

(2) Without prejudice to *subsection (6)*, where the court makes an order under *subsection (1)*, the applicant shall forthwith give notice of the making of the order in the prescribed form to the Registrar.

(3) At any time after an order for winding up is made, the court -

(a) on the application of the liquidator or any creditor or contributory; and

(b) on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed,

may make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(4) Where the court makes an order under *subsection (1)* or *(3)*, it may give such directions as to the retention or disposal of the company's seal, books and papers as it thinks fit.

(5) On any application under this section the court may require the liquidator to furnish to the court a report relating to any facts or matters which are in the liquidator's opinion relevant to the application.

(6) A certified copy of an order made under *subsection (1)* or *(3)* shall forthwith, upon the perfection of the order, be forwarded by the company, or by such other person as the court may direct, to the Registrar.

(7) If the applicant referred to in *subsection (2)* makes default in complying with that subsection, the applicant shall be guilty of a category 4 offence.

(8) If a company makes default in complying with *subsection (6)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

(9) If any other person makes default in complying with *subsection (6)*, the person shall be guilty of a category 4 offence.

**Attendance of officers of company at meetings.**

[670]. The court may, on the application of the Director or the liquidator, or on its own motion, make an order requiring the attendance of any officer of the company at -

(a) any meeting of creditors;

(b) any meeting of contributories;

(c) any meeting of members; or

(d) any meeting of a committee of inspection,

for the purpose of giving information as to the trade, dealings, affairs or property of the company.

**Power of court to summon persons for examination.**

[671]. (1) The court may exercise the following power -

(a) of its own motion; or

(b) on the application of the Director or the liquidator or provisional liquidator,

at any time after the appointment of a provisional liquidator, the making of a winding-up order or the passing of a resolution to wind up a company voluntarily.

(2) That power of the court is to summon before it -

(a) any officer of the company;

(b) any person known or suspected to have in his or her possession any property of the company or supposed to be indebted to the company; or

(c) any person whom the court deems capable of giving information relating to the -

(i) promotion or formation;

(ii) trade or dealings; or

(iii) affairs or property,

of the company.

(3) The court may examine on oath any person so summoned concerning the matters referred to in *subsection (2)(c)(i) to (iii)*, either by word of mouth or on written interrogatories, and may reduce his or her answers to writing and require him or her to sign them.

(4) The court may require any person referred to in *subsection (2)* to produce any accounting records, deed, instrument, or other document or paper relating to the company that are in his or her custody or power.

(5) The court may, before the examination takes place, require any person referred to in *subsection (2)* to place before it a statement, in such form as the court may direct, of any transactions between him or her and the company of a type or class which the court may specify.

(6) If, in the opinion of the court, it is just and equitable to do so, it may direct that the costs of the examination be paid by the person examined.

(7) A person who is examined under this section shall not be entitled to refuse to answer any question put to him or her on the ground that his or her answer might incriminate him or her and any answer by the person to such a question may be used against that person in any proceedings except proceedings for the prosecution of that person for an offence (other than perjury).

(8) If a person, without reasonable excuse, fails at any time –

(a) to attend his or her examination under this section; or

(b) to comply with the requirement under *subsection (3)* as regards signing the matters there referred to or the requirement under *subsection (4)* or *(5)*,

he or she shall be guilty of contempt of court and liable to be punished accordingly.

(9) If –

(a) a person without reasonable excuse fails at any time to attend his or her examination under this section; or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his or her examination under this section,

the court may cause that person to be arrested and the person's books and documents and movable personal property to be seized or secured and the person and them to be detained until such time as the court may order.

**Order for payment or delivery of property against person examined under *section [671]*.**

**[672].** (1) If, in the course of an examination under *section [671]*, it appears to the court that any person being examined -

(a) is indebted to the company; or

(b) has in his or her possession or control any money, property or books and papers of the company,

the court may, of its own motion or on the application of the Director or the liquidator, order such person -

(i) to pay to the liquidator the amount of the debt or any part of it; or

(ii) to pay, deliver, convey, surrender or transfer to the liquidator such money, property or books and papers or any part of it or them,

as the case may be, at such time and in such manner and on such terms as the court may direct.

(2) Where the court has made an order under *subsection (1)*, it may, on the application of the Director or the liquidator, make a further order permitting the applicant or another person specified in the order, accompanied (in either case) by such persons as the applicant thinks appropriate, to –

(a) enter at any time or times within [30 days]<sup>402</sup> after the date of issue of the order, any premises (including a dwelling) owned or occupied by the person the subject of the order under *subsection (1)* (using such force as is reasonably necessary for the purpose);

(b) search the premises so entered; and

(c) seize, in the course of such search, any money, property or books and papers of the company found on the premises.

(3) Where the court has made an order under *subsection (2)*, the applicant shall report to it as soon as may be on the outcome of any action on foot of the court's order and the court shall direct the applicant as to the disposition of anything seized on foot of the order.

(4) A direction under *subsection (3)* shall not be made in favour of the Director except in respect of the Director's costs and reasonable expenses.

(5) A person who obstructs the exercise of -

(a) a right of entry, search and seizure conferred by virtue of an order made under *subsection (2)*; or

(b) a right so conferred to take possession of anything referred to in that subsection,

shall be guilty of a category 2 offence.

(6) Proceedings on foot of an offence alleged to be committed under *subsection (5)* shall not prejudice the power of the court to issue proceedings for contempt of court for failure by a person to comply with an order under this section.

(7) In this section “liquidator” includes a provisional liquidator.

**Delivery of property of company to liquidator.**

[673]. (1) In a winding up of a company, on notice in writing being given by the liquidator requiring him or her to do so, any –

- (a) contributory for the time being on the list of contributories;
- (b) trustee;
- (c) receiver;
- (d) banker; or
- (e) agent or officer,

of the company shall, within such period as is specified in the notice, pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any money, property, books or papers which happen to be in his or her hands for the time being and to which the company is *prima facie* entitled.

(2) The court may exercise the following power -

- (a) of its own motion; or
- (b) on the application of the liquidator,

at any time after the appointment of a provisional liquidator, the making of a winding-up order or the passing of a resolution to wind up a company voluntarily.

(3) That power of the court is to require a person referred to in any of *paragraphs (a) to (e)* of *subsection (1)* to pay, deliver, convey, surrender or transfer forthwith, or within such period as the court directs, to the liquidator any money, property or books and papers in his or her hands to which the company concerned is *prima facie* entitled.

(4) In discharging the duties imposed by *section [624]*, the liquidator shall, for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he or she were a receiver of the property appointed by the court, and the court may, on the application of the liquidator, enforce such acquisition or retention accordingly.

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<sup>402</sup> Substituted by point 93 of Committee Amendments.

(5) In this section “liquidator” includes a provisional liquidator.

**Power to exclude creditors not proving in time.**

[674]. (1) Subject to *subsections (3) and (4)*, the liquidator may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts or claims are proved.

(2) The time or times so fixed by the liquidator shall be notified, in writing, by him or her to the creditors.

(3) A time shall not be fixed pursuant to *subsection (1)* which falls earlier than 28 days after the day on which creditors are notified under *subsection (2)* of the fixing of that time.

(4) The court may upon the application of a creditor, made on notice to the liquidator, extend the time fixed pursuant to *subsection (1)* within which that creditor may prove his or her debt or claim.

**Order for arrest and seizure, etc.**

[675]. (1) The court may, in either of the cases specified in *subsection (2)* -

(a) at any time after the presentation of a petition to wind up a company or the passing of a resolution to wind up a company voluntarily; and

(b) on proof of probable cause for believing that a contributory, director, shadow director, secretary or other officer of the company is about to quit the State or otherwise to abscond or to remove or conceal any of his or her property for the purpose of evading payment of calls or of avoiding examination about the affairs of the company,

cause –

(i) the contributory, director, shadow director, secretary or other officer to be arrested; and

(ii) that person’s books and papers and movable personal property to be seized or secured,

and the person and them to be detained until such time as the court may order.

(2) The court may exercise the powers under *subsection (1)* -

(a) of its own motion; or

(b) on the application of the Director, a creditor of the company or any other interested person.

**Provisions as to arrangement binding creditors.**

[676]. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within 21 days after the date of completion of the arrangement, appeal to the court against it, and the court, on the hearing of the appeal, may, as it thinks just, amend, vary or confirm the arrangement.

(3) This section is in addition to the circumstances in which a compromise or arrangement in relation to a company may become binding under *Chapter 1 of Part 9*.

**Chapter 12**

Provisions supplemental to conduct of winding up

**Effect of winding up on business and status of company.**

[677]. (1) From the commencement of the winding up, the company shall cease to carry on its business, except so far as may be required for the beneficial winding up of it.

(2) However the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its constitution, continue until it is dissolved.

(3) On the appointment of a liquidator, other than a provisional liquidator, all the powers of the directors of the company shall cease, except so far as -

(a) in the case of a winding up by the court or a creditors' voluntary winding up, the committee of inspection or, if there is no such committee, the creditors, sanction (in either case, with the approval of the liquidator) the continuance of those powers; or

(b) in the case of a members' voluntary winding up, the members in general meeting sanction the continuance of those powers.

(4) The continuance of the directors' powers by virtue of a sanction under *subsection (3)* shall not, in any case, and notwithstanding anything in *section 40*, operate to give precedence to any decision or act of the directors made or done during the course of the winding up over that made or done by the liquidator in respect of the matter concerned and, without prejudice to the foregoing, no decision or act made or done by the directors in respect of a matter falling within *section [627]* shall be valid

unless made or done with the prior consent of the liquidator, but this is subject to *subsection (5)*.

(5) The court may, on application to it by a person aggrieved, grant such relief as it thinks appropriate from the sanction of invalidity provided under *subsection (4)* if it is satisfied that the person (not being an officer of the company) acted in good faith in the matter.

(6) An application under *subsection (5)* shall be made on notice to the liquidator and –

- (a) each creditor who has submitted a proof of his or her debt or claim under and in accordance with this Part; and
- (b) each contributory for the time being on the list of contributories.

**Actions against company stayed on winding-up order.**

[678]. (1) When in relation to a company-

- (a) a winding-up order has been made;
- (b) a provisional liquidator has been appointed; or
- (c) a resolution for voluntary winding up has been passed,

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.

(2) *Subsection (1)* shall not apply to the taking of proceedings before the Employment Appeals Tribunal.

**Director may direct convening of meetings.**

[679]. (1) Where a meeting is required to be held under this Part and such meeting is not held within the time required or in the manner required by or under this Part, the Director may –

- (a) direct the liquidator of the company concerned to convene (or, as appropriate, reconvene) such meeting; and
- (b) specify procedures that are to be followed in convening (or reconvening) and holding such meeting, matters that are to be dealt with at such meeting and the time and location of such meeting.

(2) The Director, or his or her authorised representative, may attend at any meeting convened or reconvened pursuant to *subsection (1)*.

(3) A liquidator who fails to comply with a direction under *subsection (1)* shall be guilty of a category 3 offence.

**Duty of liquidator to call meeting at end of each year.**

[680]. (1) If a members' voluntary winding up continues for more than 12 months, then after –

- (a) the first anniversary of the commencement of the winding up; and
- (b) each subsequent anniversary of that commencement (and the winding up is continuing),

the liquidator has the following duty.

(2) That duty of the liquidator is to –

- (a) summon, giving 7 days' notice thereof, the holding of a general meeting of the company for a day falling not later than 28 days after the anniversary concerned; and
- (b) lay before that meeting an account of his or her acts and dealings and of the conduct of the winding up during the preceding year.

(3) The liquidator shall, within 7 days after the date of such meeting, send a copy of the foregoing account to the Registrar.

(4) If a winding up by the court or a creditors' voluntary winding up continues for more than 12 months, then after -

- (a) the first anniversary of the commencement of the winding up; and
- (b) each subsequent anniversary of that commencement (and the winding up is continuing),

the liquidator has the following duty.

(5) That duty of the liquidator is to –

- (a) summon, giving 7 days' notice thereof, the holding of –
  - (i) if a committee of inspection has been appointed, a meeting of the committee of inspection; or
  - (ii) if no committee of inspection has been appointed, a meeting of the creditors of the company,for a day falling not later than 28 days after the anniversary concerned; and
- (b) lay before that meeting an account of his or her acts and dealings and of the conduct of the winding up during the preceding year.

(6) The liquidator shall, within 7 days after the date of such meeting, send a copy of the foregoing account to the Registrar.

(7) Where a meeting of the committee of inspection is held pursuant to *subsection (5)(a)*, that committee may, by resolution, direct the liquidator to convene a meeting of the creditors of the company and, where such a direction is so given, the liquidator shall cause such meeting to be convened and held no later than 21 days after the date of such resolution.

(8) Where *section [584]* has effect, *subsections (4) to (6)* shall apply to the winding up to the exclusion of *subsections (1) to (3)*, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up.

(9) If the liquidator fails to comply with any provision of this section, or a direction under it, he or she shall be guilty of a category 3 offence.

#### **Information about progress of liquidation.**

**[681].** (1) This section applies where the winding up of a company is not concluded within 12 months after the date of its commencement and is subject to *subsection (4)*.

(2) Where this section applies, the liquidator of the company shall, at the intervals specified in *subsection (3)* until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars about the proceedings in, and position of, the winding up.

(3) The intervals referred to in *subsection (2)* are –

(a) as regards the first of them – the interval ending on the date of the first anniversary of the commencement of the winding up (but, for the purposes of this interval, the obligation of the liquidator under *subsection (2)* may be fulfilled at any time before the expiry of 14 days after that anniversary); and

(b) as regards subsequent intervals – intervals of 6 months, or such greater period as may be prescribed, following on from that first anniversary.

(4) The obligation under *subsection (2)* does not apply in relation to a particular winding up if and to the extent that the court specifies in a direction given by it.

(5) If a liquidator fails to comply with *subsection (2)*, he or she shall be guilty of a category 3 offence.

#### **Liquidator to report on conduct of directors.**

**[682].** (1) In this section “insolvent company” has the same meaning as it has in *Chapter 3* (restrictions on directors of insolvent companies) of *Part 14*.

(2) In a winding up of an insolvent company, the liquidator shall, within 6 months after the date of his or her appointment, and at intervals as required by the Director thereafter, provide to the Director a report in the prescribed form.

(3) The Director may require the liquidator of an insolvent company –

(a) to answer, whether orally or in writing, any question that the Director reasonably puts to the liquidator concerning the contents of a report made by the liquidator under *subsection (2)*, the affairs of the company or the conduct of any director of the company (as that expression is to be read in accordance with *section [683](1)(b)*); and

(b) to give such other assistance (as he or she is reasonably able to give) to the Director for the purpose of the Director's appraisal of such a report or the Director's examination of any fact or allegation contained in it or which comes to the Director's knowledge by reason of an answer given under *paragraph (a)* or otherwise through the Director's performance of functions under this Act,

and the liquidator shall comply with such a requirement.

(4) The Director's powers under *subsection (3)* are in addition to the powers of the Director or any other person under any other provision of this Act.

(5) A liquidator who fails to comply with *subsection (2)* or a requirement under *subsection (3)* shall be guilty of a category 3 offence.

**Obligation (unless relieved) of liquidator of insolvent company to apply for restriction of directors.**

[683]. (1) In this section –

(a) “insolvent company” has the same meaning as it has in *Chapter 3* (restrictions on directors of insolvent companies) of *Part 14*; and

(b) a reference to a director of the insolvent company is a reference to a person who was a director or shadow director of the company at the date of, or within 12 months before, the commencement of its winding up.

(2) In a winding up of an insolvent company, where this subsection applies, the liquidator shall apply under *section [819](1)* for a declaration under that provision in respect of each of the directors of the company.

(3) As respects *subsection (2)* –

(a) that subsection applies unless the Director has relieved the liquidator of the obligation to make the application under *section [819](1)* in relation to the winding up concerned or a particular director or directors (which power to so

relieve is conferred on the Director by this paragraph); and

(b) where the Director relieves the liquidator of that obligation in respect of one or more but not all of the directors, that subsection shall be read as applying to the director or directors as respects whom the liquidator has not been relieved of that obligation.

(4) An application in respect of a director under *section [819](1)*, in compliance with *subsection (2)*, shall be made not later than the expiry of –

(a) 2 months after the date on which the Director has notified the liquidator that the Director has not relieved the liquidator of the obligation to make the application in respect of the director;

or

(b) such greater period of time as the Director may allow for the purposes of the application.

(5) A liquidator who fails to comply with *subsection (2)* shall be guilty of a category 3 offence.

#### **Inspection of books by creditors and contributories.**

[684]. (1) The court may, at any time after making a winding-up order or the commencement of a voluntary winding up, make such order for inspection of the accounting records, books and papers of the company by creditors or contributories as the court thinks just.

(2) Where such an order is made, any accounting records, books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(3) Nothing in this section shall be taken as excluding or restricting any statutory rights of the Government, a Minister of the Government or a person acting under the authority of the Government or a Minister of the Government, or the powers of any person under *Part 13*.

#### **Resolutions passed at adjourned meetings of creditors and contributories.**

[685]. Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

**Books of company to be evidence in civil proceedings.**

[686]. When a company is being wound up, information contained in every book and record of the company and of the liquidator and any provisional liquidator shall, as between -

- (a) the members, officers and contributories of the company; and
- (b) any of the persons referred to in *paragraph (a)* and the liquidator, the provisional liquidator (if any) and the Director of Corporate Enforcement,

be admissible, in all civil proceedings, as evidence of any fact therein.

**Liquidator may have regard to wishes of creditors and contributories.**

[687]. (1) Subject to this Part, the liquidator may, in the administration of the property of the company and in the distribution of the property among its creditors, have regard to any directions given to him or her by resolution of the creditors or contributories at any general meeting or by the committee of inspection (if any).

(2) In case of conflict –

- (a) between any directions so given by the creditors and those so given by the contributories; or
- (b) between any directions so given by the creditors or the contributories and any directions given by the committee of inspection,

the directions, in the case of *paragraph (a)*, of the creditors shall override those of the contributories and the directions, in the case of *paragraph (b)*, of the creditors or contributories shall override those of the committee of inspection.

(3) The liquidator –

- (a) may convene general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and
- (b) shall, for that purpose, convene meetings of the creditors or, as the case may be, contributories -
  - (i) at such times as the creditors or contributories, as the case may be, by resolution direct; or
  - (ii) whenever requested in writing to do so by at least one-tenth in value of the creditors or, as [ the]<sup>403</sup> case may be, by at least one-tenth in number of the contributories.

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<sup>403</sup> Inserted by point 115 of Seanad Committee Amendments.

**Reporting to Director of misconduct by liquidators.**

[688]. (1) Where a disciplinary committee or tribunal (however called) of a prescribed professional body –

(a) finds that a member of that body who is conducting or has conducted a winding up has not maintained appropriate records in relation to that activity; or

(b) has reasonable grounds for believing that such a member has committed a category 1 or 2 offence during the course of conducting a winding up,

the professional body shall report the matter, giving details of the finding or, as the case may be, of the alleged offence, to the Director forthwith.

(2) If a professional body fails to comply with this section, it, and any officer of the body to whom the failure is attributable, shall be guilty of a category 3 offence.

**Chapter 13**

General rules as to meetings of members, contributories and creditors of a company in liquidation.

**Meetings directed by the court.**

[689]. (1) This section shall apply to meetings in a winding up ordered by the court that are held or to be held at the direction of the court and shall have effect subject to any directions the court may give.

(2) If the court so directs, notice of a meeting may be given by advertisement in which case the object of the meeting need not be stated in the advertisement.

(3) A certified copy of the order of the court appointing a person as chairperson of a meeting shall be sufficient authority for the person so appointed to preside at such meeting.

(4) The chairperson of a meeting shall make a report of the result of the meeting in such form (if any) as the court directs.

**Provisions as to meetings of creditors, contributories and members generally.**

[690]. Save where this Act otherwise provides, the provisions of *sections* [691] to [703] shall apply in relation to a meeting of creditors, contributories or members held or to be held under this Part.

**Entitlement to attend and notice.**

[691]. (1) Every person appearing by the company's books to be a creditor of the company shall be entitled to attend a meeting of creditors.

(2) The liquidator shall give to every person appearing by the company's books or otherwise to be a contributory of the company notice of a meeting of contributories.

(3) Every person appearing by the company's books or otherwise to be a member of the company shall be entitled to attend a meeting of members.

(4) The liquidator shall give notice in writing to every person entitled to attend a meeting of the time and place appointed for the meeting and of the subject matter of the meeting in such form as may be prescribed not less than 7 days before the day appointed for such meeting.

(5) The notice under *subsection (4)* to each creditor shall be sent to the address given in the creditor's proof, or if he or she has not proved, to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the liquidator.

(6) The notice under *subsection (4)* to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory or to such other address as may be known to the liquidator.

(7) The notice under *subsection (4)* to each member shall be sent to the address mentioned in the company's books as the address of such member or to such other address as may be known to the liquidator.

(8) Where a meeting of creditors, contributories or members is summoned by notice, the proceedings and resolutions of the meeting shall, unless the court otherwise orders, be valid notwithstanding that some creditors, contributories or members, as the case may be, may not have received the notice sent to them.

**Location of meeting.**

[692]. (1) Every meeting shall be held at such place as is, in the opinion of the person convening the meeting, the most convenient for the majority of the creditors, contributories or members or all, as the case may be.

(2) Different times or places may be named for the meetings of creditors and for those of contributories and for those of members.

**Costs of meetings.**

[693]. (1) Any person, other than the liquidator, who summons a meeting of creditors, contributories or members shall be liable for the costs of summoning the meeting and shall, before the meeting is summoned, deposit with the liquidator such sum as may

be required by the liquidator as security for the payment of such costs.

(2) Those costs shall be repaid out of the assets of the company if the court shall by order so direct or if the creditors or contributories (as the case may be) shall by resolution so direct.

(3) This section shall not apply to meetings under *section [587]*.

**Chairperson.**

[694]. (1) At a meeting summoned by the liquidator, the liquidator or, if the liquidator is unable to act, someone nominated by him or her, shall be chairperson and at every other meeting of creditors, contributories or members the chairperson shall be such person as the meeting by resolution shall appoint.

(2) This section shall not apply to meetings under *section [587]*.

**Passing resolutions.**

[695]. (1) At a meeting of creditors, a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution.

(2) At a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy and voting on the resolution have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the constitution of the company.

(3) This section shall not apply to a resolution referred to in *section [588](6)*, *[637](3)* or *section [668](5)* or *(6)*.

**Registration of resolutions of creditors, contributories and members.**

[696]. (1) The liquidator shall forward to the Registrar a copy certified by the liquidator of every resolution of a meeting of creditors, contributories or members within 14 days after the date upon which the meeting concerned is held.

(2) If a liquidator fails to comply with *subsection (1)*, he or she shall be guilty of a category 4 offence.

**Proceedings at the meeting.**

[697]. (1) The chairperson of a meeting may, with the consent of the meeting, adjourn it from time to time and from place to place but the adjourned meeting shall be held at the same place as the original meeting unless –

(a) in the resolution for adjournment another place is specified; or

(b) the court otherwise orders.

(2) Other than on the matter of election of the chairperson or an adjournment, a meeting may not act for any purpose, unless there are present or represented at the meeting –

(a) in the case of a creditors' meeting, at least 3 creditors entitled to vote or all the creditors entitled to vote if the number entitled to vote shall not exceed three; or

(b) in the case of a meeting of contributories or members, at least 2 contributories or members, as the case may be.

(3) If within 30 minutes from the time appointed for the meeting a quorum of creditors, contributories or members, as the case may be, is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairperson may appoint.

(4) However the day so appointed by the chairperson shall be not less than 7 nor more than 21 days after the day from which the meeting was adjourned.

#### **Entitlement to vote of creditors.**

[698]. (1) Subject to *subsection (3)*, in the case of a meeting of creditors held pursuant to *section 667* or of an adjournment thereof, a person shall not be entitled to vote as a creditor unless he or she has duly lodged with the liquidator, not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, a proof of the debt which he or she claims to be due to him or her from the company.

(2) In the case of any other meeting of creditors and subject to *subsection (3)* and *subsections (5) to (8)*, a person shall not be entitled to vote as a creditor unless he or she has lodged with the liquidator a proof of the debt which he or she claims to be due to him or her from the company and such proof has been admitted wholly or in part before the date on which the meeting is held.

(3) Neither *subsection (1)* or *(2)* shall apply to any creditors or class of creditors who by virtue of this Act or rules of court are not required to prove their debts, and *subsection (2)* shall not apply to a meeting referred to in *section 588*.

(4) The following subsections contain exceptions to, or apply restrictions on the exercise of, a creditor's entitlement to vote at a meeting to which *subsection (2)* applies.

(5) In respect of any unliquidated or contingent debt or any debt the value of which is not ascertained, the chairperson may put upon such a debt an estimated minimum value for the purpose of entitlement to vote and admit the creditor's proof for that

purpose.

(6) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him or her unless he or she is willing to do each of the following, namely:

- (a) to treat the liability to him or her on the bill or note of every person who is liable thereon antecedently to the company and against whom an adjudication order in bankruptcy has not been made, as a security in his or her hands;
- (b) to estimate the value of that liability; and
- (c) for purposes of voting but not for the purposes of dividend, to deduct that liability from his or her proof.

(7) Unless he or she surrenders his or her security, a secured creditor shall, for the purpose of voting, state -

- (a) in his or her proof; or
- (b) in the case of a meeting that falls within *subsection (8)*, in the statement referred to in that subsection -

the following matters :

- (i) the particulars of his or her security;
- (ii) the date when that security was given; and
- (iii) the value at which he or she assesses that security,

and shall be entitled to vote only in respect of the balance (if any) due to him or her after deducting the value of that security.

(8) For the purpose of voting at a meeting in a voluntary winding up (not being a meeting referred to in *section [587]*), a secured creditor shall, unless the secured creditor surrenders his or her security, lodge with the liquidator, before the meeting, a statement stating the matters referred to in *subsection (7)(i) to (iii)*.

(9) The chairperson may admit or reject a proof for the purpose of voting, but an appeal shall lie to the court against his or her decision on that matter.

(10) If the chairperson is in doubt whether a proof should be admitted or rejected the chairperson shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

**Provisions consequent on *section [698]* regarding secured creditors: deemed surrender of security, etc.**

[699]. (1) A secured creditor who, at a meeting to which *section [698](2)* applies, votes in respect of the whole debt due to him

or her shall be deemed to surrender his or her security unless the court, on application to it, is satisfied that the omission to value the security has arisen from inadvertence.

(2) The liquidator may, within 28 days after the date of there being used the proof or statement referred to in *section [698](7)* or (8) for the purpose of voting at a meeting to which *section [698](2)* applies, require the creditor concerned to give up the security for the benefit of the creditors generally on payment to the creditor of the value estimated in that proof or statement.

(3) However the creditor concerned may, at any time before being so required to give the security up, correct the valuation so estimated by furnishing a new proof to the liquidator and may deduct the new value from the debt due to him or her.

#### **Duties of chairperson.**

[700]. (1) The chairperson of a meeting shall cause -

(a) minutes of the proceedings at the meeting to be drawn up and entered in a book kept for that purpose and the minutes shall be signed by him or her or by the chairperson of the next ensuing meeting; and

(b) a list of creditors, contributories or members present at the meeting to be made and kept in such form as may be prescribed and such list shall be signed by him or her.

(2) If the chairperson fails to comply with *subsection (1)(a)* or (b), he or she shall be guilty of a category 3 offence.

#### **Proxies.**

[701]. (1) A creditor, a contributory or a member may vote either in person or by proxy.

(2) An instrument of proxy shall be in the prescribed form.

(3) A creditor, a contributory or a member may appoint any person a special proxy to vote at any specified meeting or adjournment thereof -

(a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection; and

(b) on all questions relating to any matter other than those referred to in *paragraph (a)* and arising at the meeting or an adjournment thereof.

(4) A creditor, a contributory or a member may appoint any person a general proxy.

(5) A general and a special form of proxy shall be sent to each of the creditors, contributories or members with the notice summoning the meeting, and neither the name nor description of the liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

(6) A creditor, a contributory or a member may appoint the liquidator or, if there is no liquidator, the chairperson of a meeting to act as his or her general or special proxy.

(7) No person appointed as either a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place –

(a) himself or herself;

(b) a partner of him or her; or

(c) an employer of him or her,

in a position to receive any remuneration out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company.

(8) However where any person holds one or more special proxies to vote for an application to the court in favour of the appointment of himself or herself as liquidator the person may use that proxy or those proxies and vote accordingly.

**Supplemental provisions in relation to *section [701]: time for lodging proxies, etc.***

**[702].** (1) Every instrument of proxy shall be lodged -

(a) in the case of a winding up by the court, with the liquidator;

(b) in the case of a meeting under *section [587]*, with the company at its registered office; and

(c) in the case of a voluntary winding up and the meeting is not one referred to in *paragraph (b)*, with the liquidator or, if there is no liquidator, with the person named in the notice convening the meeting to receive the proxy,

not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(2) No person who is a minor shall be appointed a general or special proxy.

(3) In the case of a creditor who is incapable of writing because of blindness or other physical infirmity, an instrument of proxy of the creditor may, subject to *subsection (4)*, be accepted if the creditor has attached his or her signature or mark to the proxy in the presence of a witness and that witness has added to the creditor's signature the witness's description and residence.

(4) *Subsection (3)* only applies if –

(a) all insertions in the instrument of proxy are in the handwriting of the witness; and

(b) the witness has certified, at the foot of the instrument of proxy, that all such insertions have been made by the witness at the request and in the presence of the creditor before the creditor attached his or her signature or mark.

(5) Where a company is a creditor, any person who is duly authorised under the seal of that company to act generally on behalf of that company at meetings of creditors, members and contributories may fill in and sign the instrument of proxy on that company's behalf and appoint himself or herself to be that company's proxy.

(6) The instrument of proxy so filled in and signed by such person shall be received and dealt with as a proxy of that company but this is without prejudice to *section [703]*.

(7) In *subsection (5)* "company" means any company which is capable of being wound up under this Act and any other body corporate.

**Representation of bodies corporate at meetings held during winding up.**

[703]. For the avoidance of doubt, *section [185]* applies to any meeting of a company held during the course of its being wound up.

## Chapter 14

### Completion of winding up

**Dissolution of company by court.**

[704]. (1) In a winding up by the court, the court may, on its own motion, make an order requiring the liquidator to make, at such time as the affairs of the company have been completely wound up, an application pursuant to *subsection (3)*.

(2) Unless such an order is made by the court, *section [706]* shall apply to the winding up by the court as if it were a creditors' voluntary winding up.

(3) If the court makes an order under *subsection (1)* requiring the liquidator to do so, the liquidator shall, at such time as it appears to the liquidator that the affairs of the company have been completely wound up, make an application to the court for the dissolution of the company.

(4) On the making of such application, if the court is satisfied that the affairs of the company have been completely wound up,

the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(5) A certified copy of an order under *subsection (4)* shall, within 21 days after the date of the making of the order, be forwarded by the liquidator to the Registrar.

(6) If the liquidator fails to comply with *subsection (3)* or *(5)*, he or she shall be guilty of a category 3 offence.

**Final meeting and dissolution in members' voluntary winding up.**

[705]. (1) In a members' voluntary winding up, as soon as the affairs of the company are completely wound up, the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of.

(2) On that account being prepared, the liquidator shall call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof.

(3) That meeting shall be called by giving at least 28 days' written notice to the members of the company.

(4) Within 7 days after the date of that meeting, the liquidator shall –

(a) send to the Registrar a copy of the account; and

(b) make a return to the Registrar of the holding of that meeting and of its date.

(5) Subject to *subsection (6)*, if a copy of the account is not sent to the Registrar, or the return is not made to him or her, in accordance with *subsection (4)*, the liquidator shall be guilty of a category 3 offence.

(6) If a quorum is not present at the meeting referred to in *subsection (2)*, the liquidator shall, instead of making the return referred to in *paragraph (b)* of *subsection (4)*, make, within the period specified in that subsection, a return to the Registrar that the meeting was duly summoned and that no quorum was present at it, and, upon such a return being made, *subsection (4)(b)* shall be deemed to have been complied with.

(7) Subject to *subsection (8)*, the Registrar, on receiving the account, and the return referred to in *subsection (4)(b)* or *(6)*, as the case may be, shall forthwith register them, and on the expiration of [3 months]<sup>404</sup> after the date of registration of the return the company shall be deemed to be dissolved.

(8) The court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an

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<sup>404</sup> Substituted by point 94 of Committee Amendments.

order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(9) A person on whose application an order under *subsection (8)* is made shall, within 14 days after the date of making of the order, deliver to the Registrar a certified copy of the order.

(10) If a person fails to comply with *subsection (9)*, he or she shall be guilty of a category 3 offence.

(11) If the liquidator fails to call a general meeting of the company as required by this section, he or she shall be guilty of a category 3 offence.

(12) Where *section [584]* has effect, *section [706]* shall apply to the winding up to the exclusion of this section as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up.

#### **Final meeting and dissolution in creditors' voluntary winding up.**

**[706].** (1) In a creditors' voluntary winding up, as soon as the affairs of the company are completely wound up, the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of.

(2) On that account being prepared, the liquidator shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(3) Each such meeting shall be called by giving at least 28 days' written notice to the members or creditors of the company, as the case may be.

(4) Within 7 days after the date of the meetings, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall –

(a) send to the Registrar a copy of the account; and

(b) make a return to the Registrar of the holding of the meetings and of their dates.

(5) Subject to *subsection (6)*, if a copy of the account is not sent to the Registrar, or the return is not made to him or her, in accordance with *subsection (4)*, the liquidator shall be guilty of a category 3 offence.

(6) If a quorum is not present at a meeting referred to in *subsection (2)*, the liquidator shall, instead of making, as respects that meeting, the return referred to in *paragraph (b) of subsection (4)*, make, within the period specified in that subsection, a return to the Registrar that the meeting was duly summoned and that no quorum was present at it, and, upon such a return being made, *subsection (4)(b)* shall, as respects that meeting, be deemed to have been complied with.

(7) Subject to *subsection (8)*, the Registrar, on receiving the account and, in respect of each such meeting, the return referred to in *subsection (4)(b)* or *(6)*, as the case may be, shall forthwith register them, and on the expiration of [3 months]<sup>405</sup> after the date of registration of the returns the company shall be deemed to be dissolved.

(8) The court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(9) A person on whose application an order under *subsection (8)* is made shall, within 14 days after the date of making of the order, deliver to the Registrar a certified copy of the order.

(10) If a person fails to comply with *subsection (9)*, he or she shall be guilty of a category 3 offence.

(11) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he or she shall be guilty of a category 3 offence.

#### **Disposal of books and papers of company in winding up.**

[707]. (1) When a company has been wound up and is about to be dissolved, the seal or seals, books and papers of the company and of the liquidator may be disposed of as follows -

(a) in the case of a members' voluntary winding up, in such way as the company by special resolution directs; and

(b) in the case of a winding up by the court or a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) However, in any of the foregoing cases and notwithstanding anything in a foregoing direction, such seal or seals, books and papers shall be retained by the liquidator for a period of at least [6 years]<sup>406</sup> after the date of the dissolution of the company and, in the absence of a foregoing direction as to their disposal, the liquidator may then dispose of them as he or she thinks fit.

(3) If a liquidator fails to comply with the requirements of this section, he or she shall be guilty of a category 4 offence.

(4) The winding up of a company shall, for the purposes of this section and *section [681]*, be deemed to be concluded -

(a) in the case of a winding up by the court (and the case is not one to which *section [704](2)* applies), on the date on which a copy of the order dissolving the company has been forwarded by the liquidator to the Registrar in accordance with *section [704](5)*;

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<sup>405</sup> Substituted by point 95 of Committee Amendments.

<sup>406</sup> Substituted by point 96 of Committee Amendments.

(b) in the case of a voluntarily winding up (including a case to which *section [704](2)* applies), on the date on which the company is deemed to be dissolved, but this paragraph is subject to *subsection (5)*.

(5) If, on the date referred to in *subsection (4)(b)*, any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator or any person who has acted as liquidator, the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account within the meaning of *section [623]*.

**Power of court to declare dissolution of company void.**

[708]. (1) Where a company has been dissolved, the court may -

(a) at any time within 2 years after the date of the dissolution;

(b) on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested,

make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void.

(2) On an order under *subsection (1)* being made, such proceedings may be taken as might have been taken if the company had not been dissolved.

(3) A person on whose application an order under *subsection (1)* is made shall, within 14 days after the date of making of the order, or such further time as the court may allow, deliver to the Registrar a certified copy of the order.

(4) If a person fails to comply with *subsection (3)*, he or she shall be guilty of a category 4 offence.

**Disposal of documents filed with Registrar.**

[709]. The Registrar shall, after the expiration of 20 years after the date of the dissolution of a company, send all the documents filed in connection with the company to the National Archives.

## Chapter 15

### Provisions related to the Insolvency Regulation

**Definition (Chapter 15).**

[710]. In this Chapter “insolvency proceedings” means insolvency proceedings opened under Article 3 of the Insolvency

Regulation in the State where the proceedings relate to a company.

**Publication in relation to insolvency proceedings.**

[711]. (1) In this section “publication” means publication of -

- (a) notice of the judgment opening the insolvency proceedings concerned;
- (b) where appropriate, the decision appointing the liquidator in those proceedings;
- (c) the name and business address of the liquidator; and
- (d) the provision (either paragraph 1 or paragraph 2) of Article 3 of the Insolvency Regulation giving jurisdiction to open the proceedings,

in [*Iris Oifigiúil*]<sup>407</sup> and once at least in 2 daily morning newspapers circulating in the State.

(2) Without prejudice to *section* [~~1052~~1050](1), publication shall be effected by the liquidator concerned.

(3) Where the company in relation to which the insolvency proceedings are opened, has an establishment (within the meaning of Article 2(h) of the Insolvency Regulation) in the State, the liquidator or any authority mentioned in Article 21(2) of the Insolvency Regulation shall ensure that publication takes place as soon as practicable after the opening of the insolvency proceedings.

**Confirmation of creditors’ voluntary winding up.**

[712]. Where -

- (a) a liquidator is appointed, under *section* [588], in a creditors’ voluntary winding up of a company; and
- (b) the centre of the company’s main interests (within the meaning of the Insolvency Regulation) is situated in the State,

the Master of the High Court may, on application by the liquidator in the prescribed form and payment of the prescribed fee, confirm the creditors’ voluntary winding up for the purposes of the Insolvency Regulation; where that winding up is so confirmed, the Master of the High Court shall provide a certificate of such confirmation.

**Provision of certain documents to liquidator.**

[713]. On -

- (a) the making of a winding-up order; or
- (b) the issue of a certificate by the Master of the High Court under *section [712]* in relation to the confirmation by the Master of a creditors' voluntary winding up,

the proper officer of the Central Office of the High Court shall, on request and payment of the prescribed fee and subject to any conditions that may be specified in rules of court, give to the liquidator or examiner concerned -

- (i) a copy of the order or certificate, certified by the officer to be a true copy; and
- (ii) any other prescribed particulars.

**Language of claims.**

[714]. A claim lodged with a liquidator by a creditor referred to in Article 42(2) of the Insolvency Regulation may, if not in the Irish or the English language, be required by the liquidator to be translated, in whole or in part, into either of those languages.

**Chapter 16**

Offences by officers of companies in liquidation, offences of fraudulent trading and certain other offences, referrals to D.P.P.,  
etc

**Application of certain provisions of Chapter and construction of certain references to company, relevant person, etc.**

[715]. (1) Without prejudice to the generality of *section [563]*, *sections [716] to [720]* apply irrespective of the mode of winding up that is being employed (or, subsequent to the time of the doing of the act or the making of the omission concerned, is employed) and a reference in any of *sections [716] to [720]* to a company is a reference to the company that is being wound up (or, subsequent to that time, is wound up).

(2) A reference in any of *sections [716] to [720]* to a relevant person is a reference to a person who, at the time of the doing of the act or the making of the omission concerned, is or was an officer of the company concerned and, for the purposes of this subsection, "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

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<sup>407</sup> Substituted by point 97 of Committee Amendments.

**Offence for failure to make disclosure, or deliver certain things, to liquidator.**

[716]. (1) Subject to *section [720](2)(a)*, a relevant person who, when requested by the liquidator to make such disclosure to the liquidator, does not, to the best of the person's knowledge and belief, fully and truly disclose to the liquidator –

- (a) all the property, real and personal, of the company; and
- (b) how and to whom and for what consideration and when the company disposed of any part of such property (except such part as has been disposed of in the ordinary way of the business of the company),

shall be guilty of a category 2 offence.

(2) Subject to *section [720](2)(a)*, a relevant person who –

- (a) does not deliver up to the liquidator, or as the liquidator directs, all such part of the real and personal property of the company as is in the person's custody or under the person's control, and which the person is required by law to deliver up; or
- (b) does not deliver up to the liquidator, or as the liquidator directs, all books and papers in the person's custody or under the person's control belonging to the company and which the person is required by law to deliver up,

shall be guilty of a category 2 offence.

**Certain fraudulent acts within 12 months preceding winding up or any time thereafter: offences.**

[717]. A relevant person who, within the period of 12 months ending on the commencement of the winding up or at any time thereafter –

- (a) subject to *section [720](2)(a)*, conceals any part of the property of the company to the value of €20.00 or more, or conceals any debt due to or from the company;
- (b) fraudulently removes any part of the property of the company to the value of €20.00 or more;
- (c) subject to *section [720](2)(b)*, conceals, destroys, mutilates or falsifies any book or paper affecting or relating to the property or affairs of the company;
- (d) subject to *section [720](2)(b)*, makes any false entry in any book or paper affecting or relating to the property or affairs of the company; or
- (e) fraudulently parts with, alters or makes any omission in any document affecting or relating to the property or affairs of the company,

shall be guilty of a category 2 offence.

**Other fraudulent acts (relating to obtaining credit, irregular pledges, etc.) within 12 months preceding winding up or any time thereafter: offences.**

[718]. A relevant person who, within the period of 12 months ending on the commencement of the winding up or at any time thereafter –

(a) has, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for;

(b) subject to *section [720](2)(a)*, under the false pretence that the company is carrying on its business, obtains on credit for or on behalf of the company, any property which the company does not subsequently pay for;

(c) subject to *section [720](2)(a)*, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of business of the company; or

(d) makes or perpetrates any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

shall be guilty of a category 2 offence.

**Material omission in statement relating to company's affairs, failure to report false debt, etc.**

[719]. (1) Subject to *section [720](2)(a)*, a relevant person who makes any material omission in any statement relating to the affairs of the company shall be guilty of a category 2 offence.

(2) A relevant person who –

(a) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of [30 days]<sup>408</sup> after the date of that proof to inform the liquidator thereof; or

(b) after the commencement of the winding up, *subject to section [720](2)(b)*, prevents the production of any book or paper affecting or relating to the property or affairs of the company,

shall be guilty of a category 2 offence.

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<sup>408</sup> Substituted by point 98 of Committee Amendments.

(3) A relevant person who, after the commencement of the winding up or at any meeting of the creditors of the company within the period of 12 months ending on that commencement, attempts to account for any part of the property of the company by fictitious losses or expenses shall be guilty of a category 2 offence.

**Additional offence with respect to section [718](c) and certain defences with respect to foregoing matters.**

[720]. (1) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under section [718](c), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those foregoing circumstances shall also be guilty of a category 2 offence.

(2) In any proceedings against a person in respect of –

(a) an offence under –

(i) section [716](1) or (2);

(ii) section [717] consisting of a contravention of *paragraph (a)* of that section;

(iii) section [718] consisting of a contravention of *paragraph (b)* or *(c)* of that section; or

(iv) section [719](1),

it shall be a defence to prove that the person had no intent to defraud; and

(b) an offence under -

(i) section [717] consisting of a contravention of *paragraph (c)* or *(d)* of that section;

(ii) subsection (2) of section [719] consisting of a contravention of *paragraph (b)* of that subsection,

it shall be a defence to prove that the person had neither an intent to conceal the state of affairs of the company nor to defeat the process of the law and, in particular, the enforcement of this Act.

**Other frauds by officers of companies which have gone into liquidation: offence.**

[721]. If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up -

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or

charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within 2 months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

the person shall be guilty of a category 2 offence.

**Fraudulent trading of company: offence.**

[722]. If any person is knowingly a party to the carrying on of the business of a company with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the person shall be guilty of a category 1 offence.

**Prosecution of offences committed by officers and members of company.**

[723]. (1) If it appears to the court, in the course of a winding up by the court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company the court may, either –

- (a) on the application of any person interested in the winding up; or
- (b) of its own motion,

direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) Where a direction under *subsection (1)* is given by the court to the liquidator, the liquidator shall–

- (a) provide to the Director of Public Prosecutions such information, relating to the matter in question, as he or she may require; and
- (b) give to him or her such access to, and facilities for inspecting and taking any copies of, such documents (being documents in the possession or under the control of the liquidator and relating to the matter in question) as he or she may require.

(3) Where the court gives the foregoing direction to the liquidator, it shall also direct the liquidator to refer the matter concerned to the Director of Corporate Enforcement.

(4) Where a direction under *subsection (3)* is given by the court to the liquidator, the liquidator shall–

- (a) provide to the Director of Corporate Enforcement such information, relating to the matter in question, as he or she may require; and

(b) give to him or her such access to, and facilities for inspecting and taking copies of, such documents (being documents in the possession or under the control of the liquidator and relating to the matter in question) as he or she may require.

(5) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company, the liquidator shall forthwith report the matter to the Director of Public Prosecutions.

(6) Where the liquidator reports a matter under *subsection (5)* to the Director of Public Prosecutions, the liquidator shall –

(a) provide to the Director of Public Prosecutions such information, relating to the matter in question, as he or she may require; and

(b) give to him or her such access to, and facilities for inspecting and taking any copies of, such documents (being documents in the possession or under the control of the liquidator and relating to the matter in question) as he or she may require.

(7) Where a foregoing report is made by the liquidator, the liquidator shall also report the matter to the Director of Corporate Enforcement.

(8) Where a matter is reported by the liquidator under *subsection (7)* to the Director of Corporate Enforcement, the liquidator shall –

(a) provide to the Director of Corporate Enforcement such information, relating to the matter in question, as he or she may require; and

(b) give to him or her such access to, and facilities for inspecting and taking copies of, such documents (being documents in the possession or under the control of the liquidator and relating to the matter in question) as he or she may require.

(9) In a voluntary winding up, the court, on application being made to it by any person interested in the winding up, or of its own motion, may give the following direction if it appears to the court that –

(a) in the course of the winding up any past or present officer, or any member, of the company has been guilty of an offence in relation to the company; and

(b) no report relating to the matter has been made by the liquidator to the Director of Public Prosecutions under *subsection (5)* or to the Director of Corporate Enforcement under *subsection (7)*.

(10) That direction of the court is one requiring the liquidator to make the report referred to in *subsection (5)* or *(7)* (or both as appropriate) and, on such a report being accordingly made, this section and *section [724]* shall have effect as though the report

had been made under *subsection (5) or (7)*, as the case may be.

**Supplemental provisions in relation to *section [723]*: duty to provide assistance to D.P.P. and Director of Corporate Enforcement.**

[724]. (1) If, where any matter is referred or reported under *section [723]* to –

- (a) the Director of Public Prosecutions; or
- (b) the Director of Corporate Enforcement,

the Director of Public Prosecutions or, as the case may be, the Director of Corporate Enforcement considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of each of the following persons to give all assistance in connection with the prosecution which he or she is reasonably able to give.

(2) The persons referred to in *subsection (1)* are the liquidator of the company and -

- (a) every officer (past or present) of the company; and
- (b) every agent (past or present) of the company,

(other than the defendant in the proceedings).

(3) For the purposes of *subsection (2)(b)* “agent”, in relation to a company, includes -

- (a) the bankers and solicitors of the company;
- (b) any receiver of the property of the company; and
- (c) any persons employed by the company as auditors, accountants, book-keepers or taxation advisers, or other persons employed by it in a professional, consultancy or similar capacity, whether those persons are (or were) or are not (or were not) officers of the company.

(4) If any person fails or neglects to give assistance in the manner required by *subsection (1)*, the court may, on the application of the Director of Public Prosecutions or, as the case may be, the Director of Corporate Enforcement, direct that person to comply with the requirements of that subsection.

(5) Where an application is made under *subsection (4)* or *section [723](9)* in relation to a liquidator, the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his or her hands sufficient assets of the company to enable him or her so to do, direct that the costs of the application shall be borne by the liquidator personally.