

ACT 180
BODIES CORPORATE (OFFICIAL LIQUIDATIONS) ACT, 1963

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ACT 180
BODIES CORPORATE (OFFICIAL LIQUIDATIONS) ACT, 1963(1)

AN ACT to make provision for the official liquidation of companies and other bodies corporate and for related matters.

Official Liquidations

Commencement of Proceedings

1. Modes of winding-up

- (1) The official winding-up of a company may be commenced by,
 - (a) a special resolution of the company,
 - (b) a petition addressed to the Registrar,
 - (c) a petition of the High Court, or
 - (d) a conversion from a private liquidation.

(2) Sections 2 to 59 apply with respect to winding-up, unless the contrary intention appears, to the winding-up of a company in any of the modes specified in subsection (1).

2. Procedure on resolution

(1) A special resolution for the official winding-up of a company shall state that the company shall be wound up by way of an official winding-up.

(2) When a company has passed a special resolution for the official winding-up of the company, a copy of the resolution after the passing of the resolution shall be sent immediately after the passing as may be practicable, to the Registrar who shall publish the resolution in the *Gazette*.

3. Procedure on petition to the Registrar

(1) Subject to subsections (2) and (3), a person who is,

- (a) a creditor of a company, or
- (b) a member or contributory of a company,

may present a petition to the Registrar for the official winding-up of the company.

(2) In the case of a company with shares, a member is not entitled to present a winding-up petition unless the shares of that member or some of them, were originally allotted to that member, or have been held by that member, and registered in the name of that member for at least six months during the eighteen months preceding the date of the presentation of the petition, or have devolved on that member by operation of law.

(3) The Registrar shall not consider a winding-up petition presented by a contingent or prospective creditor

- (a) unless a security for costs that the Registrar thinks reasonable has been given, and
- (b) until a prima facie case for winding-up has been established to the satisfaction of the Registrar.

(4) The Registrar may order the official winding-up of the company on the petition if satisfied that the company is unable to pay its debts.

(5) For the purposes of this Act, a company is not able to pay its debts,

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum of money exceeding one hundred million cedis then due, has served on the company a written demand requiring the company to pay the sum of money that is due and the company has, for twenty-one days after the demand, neglected to pay the sum of money or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) if in the Republic execution or any other process issued on a judgment, decree or order of the High Court in favour of a creditor of a company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the Registrar that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts the Registrar shall take into account the contingent and prospective liabilities of the company.

(6) A copy of the petition shall be served on the company by the petitioner on or before the day on which it is presented.

(7) Where two or more petitions are presented in respect of the same company, a winding-up order made in respect of any of the petitions shall be deemed to have been made in respect of all of the petitions so presented.

(8) A further petition shall not be presented before the termination of the official winding-up proceedings, in respect of a company regarding which a winding-up order has been made.

(9) The Registrar shall place a copy of the winding-up order in the file of the company concerned and shall publish the order in the *Gazette*.

4. Procedure on petition to the High Court

(1) The Registrar or any other person who is

- (a) a creditor of the company,
- (b) a member or contributory of the company, or
- (c) the Attorney-General, but only on the grounds specified in paragraph (c) of subsection (2),

may present a petition to the High Court for the official winding-up of the company.

(2) The High Court may order the official winding-up of a company on a petition presented under subsection (1) where,

- (a) the company does not, within a year from its incorporation, commence to carry on all of the businesses which it is authorised by its Regulations to carry on, or suspends any of those businesses for a year;
- (b) the company does not have members;
- (c) the business or objects of the company are unlawful, or the company is operated for an illegal purpose, or the business being carried on by the company is not authorised by its Regulations;
- (d) the company is unable to pay its debts; or
- (e) the Court is of the opinion that it is just and equitable that the company should be wound up.

(3) In determining whether the company is unable to pay its debts subsection (5) of section 3 shall apply.

(4) On the hearing of a winding-up petition the High Court may dismiss or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other appropriate order, but the Court shall not refuse to make a winding-up order on the grounds only

- (a) that the assets of the company have been mortgaged to an amount equal to, or in excess of, those assets, or
- (b) that the company does not have assets.

(5) Where the petition is presented by members or contributories of the company on the grounds that it is just and equitable that the company should be wound up, the High Court, if it is of the opinion,

- (a) that the petitioners are entitled to relief by winding-up the company or by some other means, and
- (b) that in the absence of any other remedy it will be just and equitable that the company should be wound up,

shall make a winding-up order, unless it is of the opinion that another remedy is available to the petitioners and that they acted unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(6) On the making of a winding-up order, a copy of the order shall forthwith be forwarded by the Registrar of the High Court to the Registrar who shall make a minute of the winding-up order in the books of the Registrar relating to the company and publish it in the *Gazette*.

(7) Subject to this section, the High Court may, at any time between the presentation of a petition and the making of a winding-up order, appoint the Registrar to exercise all or any of the powers of a liquidator.

5. Procedure on conversion to official winding-up

(1) On notice being given by the liquidator under a private liquidation in accordance with section 258 of the Companies Act, 1963 (Act 179) alleging that the company may not be able to pay its debts in full within the period stated in the declaration of insolvency, the Registrar may make a winding-up order converting the private liquidation into an official winding-up.

(2) The allegation made under subsection (1) shall be accompanied by a statement in the prescribed form of the company's assets and liabilities.

(3) For the purposes of this section, proceedings taken on a private liquidation are validly taken unless the High Court otherwise directs.

6. Stay of proceedings

(1) On the commencement of winding-up proceedings against a company, civil proceedings against the company shall be stayed and a transfer of shares of the company is void.

(2) During the interval between the presentation of a petition for an official winding-up and the commencement of the winding-up, the High Court may, on an application made by a party to the petition or the Registrar, stay the proceedings by or against the company, or in respect of its property; and accordingly a disposition of the property of the company, including things in action and a transfer of shares is void, unless the Court otherwise directs.

The Liquidator

7. Registrar as liquidator

The Registrar shall be the liquidator in an official winding-up under this Act.

8. Status of the liquidator

(1) In an official winding-up under this Act, the liquidator stands in a fiduciary relationship to the company as if the liquidator were a director of the company, and accordingly sections 203 to 216 of the Companies Act, 1963 (Act 179) shall apply to the liquidator in the manner and to the extent that they apply to a director.

(2) A liability shall not attach to the liquidator in respect of a breach of duty imposed on the liquidator by or under this Act and a liability shall not attach to the Republic in respect of that breach, except for the re-imburement of the moneys lost to the company through the default of the liquidator.

(3) This section does not affect the institution against a public officer of criminal proceedings or of disciplinary proceedings under the Civil Service Act, 1993.2(2)

9. Powers of the liquidator

- (1) The liquidator in an official winding-up under this Act may
 - (a) bring or defend an action or any other legal proceedings in the name and on behalf of the company;
 - (b) carry on the business of the company so far as may be necessary for the beneficial winding-up of the company;
 - (c) appoint a legal practitioner to assist the liquidator in the performance of the functions of the liquidator;
 - (d) pay any classes of creditors in full;
 - (e) make a compromise or an arrangement, subject to section 231 of the Companies Act, 1963, (Act 179) with creditors or persons claiming to be creditors or being or alleging themselves to have claims, present or future, certain or contingent, ascertained or sounding only in damages, against the company or whereby the company may be rendered liable;
 - (f) compromise the calls and liabilities to calls, debts and liabilities capable of resulting in debts, and the 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 any other debtor or person apprehending liability to the company, and the questions relating to or affecting the assets or the winding-up of the company, on the terms that may be agreed, and take security for the discharge of that call, debt, liability or claim and give a complete discharge in respect of any of them;
 - (g) sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole of that property or those things to a person or company or to sell the property or those things in parcels;
 - (h) do the acts and execute, in the name and on behalf of the company, the deeds, receipts and any other documents and for that purpose use, when necessary, the company's seal;
 - (i) prove and rank the claims in the bankruptcy, insolvency or sequestration of a contributory for a balance against the estate of that contributory, and may receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;
 - (j) draw, accept, make and endorse a 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;
 - (k) raise on the security of the assets of the company the requisite money;
 - (l) take out in the official name of the liquidator letters of administration to a deceased contributory and perform in the official name of the liquidator, any other act necessary for obtaining payment for money due from the contributory or the estate of the contributory which cannot be conveniently done in the name of the company, and in those cases the money due shall, for the purposes of enabling the liquidator to take out the letters of

administration or recover the money, be deemed to be due to the liquidator; and

- (m) do any other thing that may be necessary for winding-up the affairs of the company and the distribution of its assets.

10. Delegation of functions

(1) An act required or authorised to be done by or in relation to the liquidator appointed under this Act may be done instead by or in relation to a public officer authorised in that behalf by the liquidator or under any other enactment; and a public officer acting in that behalf shall be presumed to be authorised unless the contrary is shown.

(2) A reference to the liquidator in an enactment includes a public officer authorised or presumed to be authorised under subsection (1).

(3) Where the liquidator considers it necessary, for the performance of the functions of the liquidator, the liquidator may make the appropriate payment for the services of persons who are not public officers.

11. Powers of the High Court

(1) A person aggrieved by an act done by the liquidator in the performance of functions under this Act may appeal to the High Court which shall make an appropriate order.

(2) Where a person refuses or fails to comply with a requirement made by the liquidator under this Act, the liquidator may apply to the Court, which may order the requirements to be carried out.

(3) Where the liquidator is in doubt as to a matter in connection with the liquidator's functions under this Act, the liquidator may apply to the Court for directions.

12. Liquidation Fund

(1) There shall be a fund, to be known as the Liquidation Fund, into which shall be paid the moneys received by the liquidator under this Act, and to which shall be debited the moneys disbursed by the liquidator under this Act.

(2) There shall be an account within the Liquidation Fund, to be known as the Fees Account, to which shall be credited the moneys received by the liquidator by way of fees and any other charges.

(3) The payments required or authorised by this Act to be met out of the Liquidation Fund are hereby charged on that Fund.

Effects of Commencement of Proceedings

13. Time of commencement

An official winding-up under this Act commences

- (a) on the passing of a resolution for the winding-up of the company, or
- (b) on the making of a winding-up order,

and the words "commencement of a winding-up" and its cognate expressions shall be construed accordingly.

14. Cessation of directors' functions

On the commencement of a winding-up, the functions of the directors of the company shall vest, without further authority than this section, in the liquidator except in so far as the liquidator sanctions the continuance of those functions.

15. Cessation of company's business

On the commencement of a winding-up, the company shall cease to carry on its business, except as may be required for the beneficial winding-up of the company; but the corporate state and the corporate powers of the company shall, despite anything to the contrary in its Regulations, continue until the company is dissolved.

16. Custody of company's property

(1) Except as may otherwise be directed by the liquidator, the property of a company shall, during winding-up proceedings, remain vested in the company.

(2) Subject to subsection (1), the liquidator shall take into custody or under control the property and things in action to which the company is or appears to be entitled.

(3) The property in the possession of the company at any time within six months before the commencement of a winding-up shall be presumed to be vested in the company unless the contrary is shown.

(4) The liquidator may, after the commencement of a winding-up, require a member or contributory and a trustee, receiver, banker, an agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within a reasonable time that the liquidator may direct, to the liquidator the money, property or books and papers in the hands of that person to which the company is prima facie entitled.

17. Prohibition on civil proceedings

On the commencement of a winding-up, an action or civil proceedings against the company, other than proceedings by a secured creditor for the realisation of the security of that secured creditor, shall not be proceeded with or commenced except by leave of the High Court and subject to the terms that the Court may impose.

18. Avoidance of transfer of shares

A transfer of shares which is not a transfer made to or with the sanction of the liquidator made after the commencement of a winding-up, is void.

Investigation into the Affairs of the Company

19. Statement of affairs

(1) There shall, within fourteen days or any other period that the liquidator may in writing allow, be made out and submitted to the liquidator, a statement as to the affairs of the company in a form approved by the liquidator, verified by an affidavit and showing,

- (a) particulars of the total assets of the company;
- (b) the debts and liabilities of the company including particulars of the company's transactions during the period that the liquidator may in writing specify;

- (c) the names, addresses both residential and postal and the occupations of the creditors of the company and the securities held respectively by them together with the dates when the securities were respectively given;
- (d) a statement of the reasons for the company's insolvency; and
- (e) any other information that the liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who were, at the commencement of the winding-up, directors of the company and by the person who was at that date a secretary of the company, or by any of the persons mentioned in paragraphs (a), (b), (c) and (d) of this subsection which the liquidator may require to submit and verify the statement, that is to say, 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 one year before the commencement of the winding-up;
- (c) who are in the employment of the company, or have been in the employment of the company within one year before the commencement of the winding-up, and are in the opinion of the liquidator capable of giving the information required; and
- (d) who are or have been, within one year before the commencement of the winding-up, officers of, or in the employment of, the company which is, or within one year before the commencement of the winding-up was, an officer of the company to which the statement relates.

(3) A person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the liquidator out of the assets of the company, the costs and expenses incurred in and about the preparation and making of the statement and affidavit that the liquidator may consider reasonable subject to an appeal to the High Court.

(4) A person who, without reasonable excuse, makes default in complying with the requirements of this section commits an offence and is liable to a fine not exceeding two hundred penalty units for every day during which the default continues.

(5) A person claiming in writing to be a creditor, member or a contributory of the company is personally entitled or by the agent of that person, at a reasonable time, on payment of the prescribed fees, to inspect the statement submitted in pursuance of this section and to a copy of or an extract from, the statement.

(6) A person who untruthfully and personally states in writing to be a creditor, member or a contributory of the company commits the offence of contempt of court and is punishable accordingly, on the application of the liquidator.

20. Settlement of list of contributories

- (1) As soon as may be after the making of a winding-up order, the liquidator
 - (a) shall settle a list of contributories with power to rectify the register of members in the cases where rectification is required in pursuance of this Act, and
 - (b) shall cause the assets of the company to be collected, and applied in the discharge of its liabilities.
- (2) Subject to subsection (1), 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.

(3) 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.

(4) The liability of a contributory creates a debt in the nature of a speciality accrued due from that contributory at the time when the liability of that contributory commenced but payable at the times calls are made for enforcing the liability.

(5) Where a contributory dies before or after the settlement of the list of contributories, the personal representatives are liable in due course of administration to contribute to the assets of the company in discharge of the liability of that contributory and shall be deemed to be contributories accordingly.

(6) Where the personal representatives are placed on the list of contributories and they default in the payment of moneys ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment from that estate of the moneys due.

- (7) Where a contributory becomes bankrupt, before or after the settlement of the list of contributories,
- (a) the trustee in bankruptcy of that contributory shall represent the contributory for the purposes of the official winding-up, and shall be deemed accordingly to be a contributory, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of the assets in due course of law, the moneys due from the bankrupt in respect of the liability of the bankrupt to contribute to the assets of the company; and
 - (b) there may be proof against the estate of the bankrupt, the estimated value of the liability of the bankrupt to future calls, as well as calls already made.

(8) Subject to this section, when the creditors of the company are paid in full, moneys due on an account to a contributory from the company may be allowed to the contributory by way of set-off against a subsequent call.

(9) Where a company is being wound up, the books and papers of the company and of the liquidator are prima facie evidence, as between the contributories of the company, of the truth of the matters purporting to be recorded in those books and papers.

21. Rectification of register of members

Subject to this Act, a person aggrieved, a member of the company, the company or the liquidator, may apply to the High Court for the rectification of the register of members.

22. Proof of debt

(1) During the continuance in force of a winding-up order, a creditor of a company may lodge with the liquidator a statement, to be known as a proof of debt, in accordance with this section.

- (2) The proof of debt shall be in two parts, the first part containing brief particulars of,
- (a) the values and due dates of provable debts alleged by the creditor to be outstanding in favour of the creditor against the company and the nature and value of the securities held by the creditor in respect of those debts,
 - (b) the values and due dates of the obligations outstanding in the company's favour against the creditor on the date on which the winding-up order was made against the company,

- (c) the nature and value of securities of any description held by the company in respect of those obligations as are mentioned in paragraph (b), and
- (d) the total values of the debts, obligations and securities specified in this subsection;

and the second part containing details of the transactions from which those debts and obligations arose.

(3) A copy of the first part of a proof lodged under this section shall be given by the liquidator to the company, and to each creditor mentioned in the company's statement of affairs or who, not being so mentioned, personally lodges a proof, and if the company knows or believes that the proof is false in a material particular, the company shall inform the liquidator as soon as may be practicable.

(4) The liquidator shall examine a proof of debt lodged with the liquidator and if, after considering the representations made by the company or any other creditor, it appears to the liquidator that an item is improperly included or a value incorrectly stated or that the proof is otherwise incorrect, the liquidator shall give notice of the objection to the creditor who may lodge an amended proof within the period specified in the notice or the period that the liquidator may allow.

(5) On being satisfied with a proof of debt, the liquidator shall give notice to the creditor that the liquidator admits the proof of debt subject to verification under section 39.

(6) Where a creditor fails to lodge an amended proof of debt or a further amended proof of debt within the period allowed under subsection (4), and the liquidator is still of the opinion that the previous proof of debt is incorrect, the liquidator shall give notice to the creditor that the liquidator rejects the proof of debt.

(7) The liquidator may by notice in the *Gazette* fix a time within which creditors are to prove their debts or claims or to be excluded from the benefits of a distribution made before those debts are proved.

23. First meeting of creditors

(1) The liquidator shall call a first meeting of creditors for a date not later than six weeks after the publication of the winding-up order, and shall give the notice of the meeting that may be practicable to each creditor who is mentioned in the company's statement of affairs or who, not being so mentioned, has lodged a proof of debt.

(2) So far in advance as may be practicable, the liquidator shall give to every creditor of the company a copy of the company's statement of affairs and of the proposals for an arrangement with creditors lodged by the creditor together with the observations on the proposals that the liquidator may wish to make.

(3) The liquidator shall put to the meeting the questions that the liquidator considers appropriate, and where the company has proposed an arrangement with creditors, the meeting shall be asked to approve or reject the proposal.

(4) An arrangement with creditors is not approved unless it has secured at least three-quarters of the votes cast.

(5) The meeting shall be closed not later than eight weeks after the publication of the winding-up order.

(6) At a meeting of creditors of a company, the meeting is not competent to act for any purpose unless at least three creditors with admitted proofs of debt, or the creditors if they are less than three, are present in person or by representatives holding proxies.

(7) Where a quorum is not present within half an hour after the time appointed for the meeting of

creditors, the liquidator shall adjourn the meeting to a date that the liquidator may determine which is not less than seven nor more than fourteen days after that meeting, and if a quorum is still not present within half an hour after the time appointed for the meeting, the meeting shall be taken to be cancelled.

(8) The cancellation of a meeting under subsection (7) shall not prevent the High Court from considering and determining a matter as if the meeting had been held and closed on the day on which it was cancelled.

(9) Subsection (8) does not authorise the Court to confirm an arrangement with creditors which has not been approved by the first meeting of creditors.

(10) The liquidator shall preside over the meeting of creditors and at that meeting each creditor with an admitted proof is entitled to be heard in person or by a representative holding a proxy.

(11) Except as otherwise provided in this Act, questions at a meeting of creditors shall be decided by a simple majority of the votes cast and each creditor with an admitted proof is entitled to one vote for each complete set of ten thousand cedis of the net amount of the debt of each creditor as shown in the proof of debt at the time when the meeting opens.

(12) For the purposes of voting under this section, the net amount of a debt shall be calculated by deducting the following amounts from the total value of the debts owned to the creditor, namely,

- (a) the total value of securities held by the creditor,
- (b) the total value of obligations outstanding in the company's favour against the creditor, and
- (c) the amount of every dividend to which the creditor has become entitled.

24. Private examination by the High Court

(1) The liquidator may, after the making of a winding-up order, summon before the High Court

- (a) an officer of the company or a person known or suspected of having in that person's possession a property of the company or supposed to be indebted to the company, or
- (b) a person whom the liquidator considers capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The Court may examine a person summoned before the Court on oath concerning the matters specified in subsection (1) by word of mouth or on written interrogatories and may reduce the answers to writing and require that person to sign them.

(3) The Court may require a person summoned before the Court to produce the books and papers in the custody or power of that person relating to the company, but where that person claims a lien on the books or papers produced by that person, the production shall be without prejudice to that lien, and the Court may determine in the official winding-up the questions relating to that lien.

(4) Where a person summoned under this section after being tendered a reasonable sum of money for expenses, refuses to come before the Court at the time appointed, not having a lawful impediment, made known to the Court at the time of its sitting and allowed by the Court, the Court may order the arrest of that person who shall be brought before the Court for examination.

25. Examination of fraudulent or delinquent persons

Where it appears to be necessary to do so, the liquidator shall apply to the High Court for an enquiry into the conduct of a person as regards the activities of that person in relation to the company.

26. Order against fraudulent or delinquent persons

(1) Where, in the course of the official winding-up of a company, it appears that a business of the company has been carried on with intent to defraud the creditors of the company or creditors of any other person or for a fraudulent purpose, the High Court may, on the application of the liquidator or of a creditor, member or contributory of the company, declare that the persons who were knowingly parties to the carrying on of that business in the manner stated are personally responsible, without a limitation of liability, for the debts or any of the debts or any other liabilities of the company that the Court may direct.

(2) On the hearing of an application under subsection (1), the liquidator may personally give evidence or call witnesses.

(3) Where the Court makes a declaration, it may give any other directions for the purpose of giving effect to that declaration, and in particular may provide for making the liability of a person under the declaration a charge on a debt or an obligation due from the company to that person, or on a mortgage or charge or an interest in a mortgage or charge on the assets of the company held by or vested in that person or a company, or a person on behalf of that person, or a person claiming as an assignee from or through the person liable, or a company or person acting on behalf of that person, and may make any further order that may be necessary for the purpose of enforcing a charge imposed under this subsection.

(4) For the purposes of this section, the expression “**assignee**”

- (a) includes a person who or in whose favour, by the directions of the person liable, the debt, obligations, mortgage or charge was created, issued or transferred or the interest created, but
- (b) does not include an assignee, for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of the matters on the grounds of which the declaration is made.

(5) Where the business of a company is carried on at a time when, to the knowledge of the directors of the company, the company did not have a reasonable prospect of paying its debts as they fall due, that business is carried on, for the purposes of this Act, with intent to defraud the creditors of the company.

27. Consequences of order

(1) Where a business of a company is carried on with the intent and for the purposes mentioned in subsection (1) of section 26, a person who was knowingly a party to the carrying on of the business in the manner described in section 26, is liable on conviction on indictment to a term of imprisonment not exceeding five years or to a fine not exceeding one thousand penalty units or to both the imprisonment and the fine.

(2) This section and section 26 shall have effect although the person concerned may be criminally liable in respect of the matters on the grounds of which the declaration is to be made, and where the declaration under subsection (1) of section 26 is made, the declaration for the purposes of this Act, is a final judgment of the High Court.

Assets Available for Winding-up

28. Property in liquidator’s custody or control

The property of the company in the custody of the liquidator by virtue of section 16 shall be made available by the liquidator for the purposes of the official winding-up.

29. Repayment by preferred creditors

Where, at the time between the making of a winding-up order and the end of the liquidation of the company, it appears to the liquidator that, during the six months ending with the commencement of the winding-up and at a time when the company was insolvent the company,

- (a) made a payment or any other transfer of property, or
- (b) paid a mortgage or any other charge, or
- (c) suffered a judgment or incurred any other obligations,

with the dominant intent that any of its creditors should benefit at the expense of others, the liquidator shall give notice to the creditor so preferred and require that creditor, within the period specified in the notice, to restore to the liquidator whether by payment of money, transfer of property or surrender of rights, the benefit which has accrued to the creditor by reason of the creditor being preferred.

30. Restoration of property

(1) On the commencement of a winding-up, a person who during the relevant period received a payment of money or any other transfer of property in respect of a debt owed to that person by the company shall, on receipt of a notice given in that behalf by the liquidator, restore the property or its value to the liquidator.

(2) For the purposes of subsection (1), the expression “**relevant period**” means the period beginning twenty-one days before the presentation of the petition on which the winding-up order was made or, if made on two or more petitions, before the presentation of the first petition, and ending with the making of the winding-up order.

(3) Subsection (1) does not apply to a payment of any other transfer of property,

- (a) made by the company to its banker in so far as it has been subsequently disbursed by the bank in meeting cheques drawn by the company,
- (b) made in respect of a debt incurred during the relevant period,
- (c) made in respect of a secured debt, or
- (d) made on the enforcement against a third party of a guarantee or indemnity, or of a mortgage, charge or lien on that party’s property.

(4) On the commencement of the winding-up, the property in the possession of the sheriff at the time of the making of the winding-up order, which is property of which possession was taken under an execution issued by a creditor of the company or the proceeds of that property shall, after deduction of the sheriff’s and bailiff’s charges in the execution, be transferred to the liquidator.

(5) Where a person has complied with a notice given under section 29 or under subsection (1) of this section, that person may, within one month after the notice was given, lodge a proof of debt or require the liquidator to amend the proof, so as to enable the debt in respect of which the notice was given to rank for dividend at the value which is appropriate in view of that compliance.

31. Repayment of gifts

(1) Where it appears to the liquidator that the company made a disposition of its property otherwise than for full value or in settlement of a due debt or incurred an obligation otherwise than for full value,

- (a) during the two years ending with the making of the winding-up order, or
- (b) more than two years but less than ten years before the making of the winding-up order and at a time when the company was insolvent,

the liquidator shall give notice to the person to whom the disposition was made or for whose benefit the obligation was incurred requiring that person, within the period specified in the notice, to restore to the liquidator, whether by payment of money, transfer of property or surrender of rights, the excess of the benefit which accrued to that person above the value of a consideration provided.

(2) Excess benefit restored under subsection (1) shall, except where a director of a company commits a breach of duty under sections 203 to 205 of the Companies Act, 1963 (Act 179), be treated as a provable debt in respect of which a proof may be lodged within one month after its restoration.

32. Payment by money-lenders

Where, between the making of a winding-up order and the end of the liquidation, it appears to the liquidator that during the ten years ending with the making of the winding-up order, a sum of money was paid or allowed by the company in respect of a loan in circumstances in which the High Court would, if proceedings had been brought under section 3 of the Loans Recovery Act, 1918,3(3) have ordered the lender to make a repayment to the company, the liquidator may give notice to the lender requiring the lender, within the period specified in the notice, to make a like payment to the liquidator.

33. Avoidance of assignment and floating charges

(1) A conveyance or an assignment by a company of its property to trustees for the benefit of its creditors is void.

(2) A property covered by subsection (1) or a floating charge invalidated under section 90 of the Companies Act, 1963 (Act 179) shall be dealt with as part of the general assets of the company.

34. Call on contributories

(1) The liquidator may, after the making of a winding-up order, and before or after it has ascertained the sufficiency of the assets of the company make calls on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability,

- (a) for the payment of moneys which the liquidator considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, and
- (b) make an order for the payment of the calls so made.

(2) In making a call the liquidator may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

(3) The liquidator may order a contributory, purchaser or any other person from whom money is due to the company to pay the amount due into a bank specified by the liquidator or a branch of that bank to the account of the liquidator instead of to the liquidator, and the order may be enforced in the same manner as if it had directed payment to the liquidator.

(4) An order or call made by the liquidator under this section is conclusive evidence, subject to the right of appeal, that the money thereby appearing to be due or ordered to be paid, is due.

(5) A call made by the liquidator under subsection (1) shall, for the purposes of recovering a sum of

money due, have the same effect as an order of the High Court.

35. Sums to be credited to company's official account

(1) The liquidator shall open an account, to be known as the company's official account, within the company's Liquidation Fund for each company in respect of which the liquidator is liquidator and shall credit to that account

- (a) the moneys received by the liquidator in respect of the company by virtue of this Act,
- (b) the payments made to the liquidator in respect of the company for the purpose of increasing the assets available for dividends, and
- (c) repayments in respect of excess dividends made under subsection (2) of section 45.

(2) Where, on the application of the company or of a creditor, it appears to the liquidator before the termination of the liquidation that assets have been lost to the estate by reason of a default by the liquidator, the High Court may order that the company's official account be credited with a sum of money that may appear to the Court to be just and that an equivalent sum of money be debited to the fees account.

General Duties of Liquidator in Administration of Company's Property

36. Collection of debts

On the commencement of the winding-up, the liquidator shall secure the payment to the liquidator or any other discharge of the debts and any other obligations the right to which has passed to the liquidator under section 16.

37. Vesting property in liquidator

(1) On the commencement of a winding-up, the liquidator may by notice in the *Gazette* direct that the property or a part of the property of whatever description belonging to the company or held by trustees on behalf of the company, shall vest in the liquidator in the official name of the liquidator and the property to which the notice relates shall vest accordingly.

(2) The liquidator may bring or defend in the official name the acts or any other legal proceedings which relate 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.

38. Realising assets

(1) On the commencement of a winding-up, the liquidator shall realise as soon as practicable the assets not held as cash by the means and for the return that will produce for distribution to the creditors of the company sums of money representing the full value of the assets.

(2) Subsection (1) does not require the realisation of the assets which cannot be readily or advantageously disposed of.

39. Verifying debts ranking for dividends

(1) At the conclusion of the first meeting of creditors or, if a first meeting is not held, as soon as practicable after the admission of the proof of debt under section 22, the liquidator shall take practical

steps to verify the correctness of every admitted proof.

(2) If, when the winding-up order is made, creditors' obligations that are mentioned in section 22 are included in a creditors' admitted proof,

- (a) where the total value of the obligations as shown in the proof is less than the total value of debts owed to the creditors as so shown, the obligations shall be deemed to be cancelled at the time of the making of the winding-up order and the values of the debt shall be pro rata reduced; and
- (b) in any other case, the obligations shall be deemed to be pro rata reduced at the time of the making of the winding-up order by the total value of the debts and the proof shall be deemed to be expunged.

(3) The liquidator may give notice to a creditor holding a security that if the security is not realised within the period specified in the notice, which shall not be less than six months, it shall be treated as surrendered.

(4) Subject to sections 1 to 59, a debt shall rank for dividend at any time if, but only if, it is at that time included in an admitted proof, and the value of the debt shall be taken to be the value shown at that time in the admitted proof.

40. Amending admitted proofs

(1) Where the value of a debt or security included in an admitted proof has changed otherwise than in respect of interest accruing after the commencement of the winding-up order, the proof is subject to amendment for the purpose of altering the value shown in the admitted proof to give effect to the change.

(2) Where a debt or security is incorrectly included in an admitted proof or the value of a debt or security at the date of the commencement of the winding-up order is incorrectly stated, the proof is subject to amendment for the purpose of rectifying the incorrectness.

(3) Where a creditor desires to withdraw the claims of the creditor to the whole or part of a debt included in an admitted proof, the proof is subject to amendment for the purpose of deleting the debt or reducing its value accordingly.

(4) Where an admitted proof is subject to amendment under this section,

- (a) the liquidator may, except in the case of an amendment under subsection (3), give notice to the creditor specifying the proposal and inviting the creditor to consent to it within the period specified in the notice, or
- (b) the creditor may, where the liquidator has not given the notice referred to in paragraph (a), give notice to the liquidator specifying the proposed amendment and, except in the case of amendment under subsection (3), inviting the liquidator to consent to it within the period specified in the notice.

(5) Where notice of a proposed amendment is given under subsection (4), the liquidator shall amend the proof accordingly,

- (a) if the party to whom the notice is given consents to the amendment, or
- (b) if consent is not given but, on an appeal by the creditor or on application by the liquidator, the High Court orders the amendment to be made, or
- (c) if the amendment is proposed by the creditor under subsection (3).

41. Ascertaining priority of debt

(1) On the commencement of a winding-up, the liquidator shall, in relation to each debt which ranks for dividend, ascertain into which class the whole or a part of the debt falls.

(2) The classes are,

- (a) Class A, that is to say, a debt or part of a debt which answers either of the following descriptions:
 - (i) remuneration not exceeding sixty million cedis owed to an employee of the company in respect of employment during the whole or a part of the four months preceding the commencement of the winding-up;
 - (ii) rates, taxes or similar payments owed to the Republic or a local authority which have become due and payable within the year preceding the date of the commencement of the winding-up;
- (b) Class B, that is to say, a debt or a part of a debt which does not fall within any other class;
- (c) Class C, that is to say, a debt or a part of a debt which does not fall within class D and is, or was, within the year preceding the commencement of the winding-up, owed to a director or former director of the company or to a near relative of that director or former director;
- (d) Class D, that is to say, a debt or a part of a debt which answers either of the following descriptions:
 - (i) excess benefit restored to the liquidator under section 31; or
 - (ii) excess interest that is a portion of a debt which, whether it is stated to do so or not, represents interests at a rate in excess of seven percent per annum.

(3) Class A debts shall have priority over the claims of holders of debentures under a floating charge credited by the company and shall be paid accordingly out of the property comprised in or subject to that charge.

42. Consulting creditors and members

(1) Subject to this Act, the liquidator shall,

- (a) report to the creditors at intervals of not more than six months on the progress of the liquidation,
- (b) consult the creditors on the matters arising in the proceedings which substantially affect their interest, and
- (c) give effect, so far as may be practicable, to the views expressed by the creditors in relation to the realisation and distribution of assets.

(2) For the purpose of complying with subsection (1), the liquidator may call a meeting of creditors at any time, and shall call a meeting if required so to do by a notice in writing signed by the creditors whose votes exceed one-fifth of the total number of votes which would be cast at the meeting.

(3) Subsections (6) to (12) of section 23 shall apply in relation to a meeting of creditors called under this section.

(4) Subject to this section, in the event of an official winding-up continuing for more than one year,

the liquidator

- (a) shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding-up, and of each succeeding year, or at the first convenient date within three months from the end of the year or a longer period that the Minister may allow,
- (b) shall lay before the meeting an account of the acts and dealings of the liquidator and of the conduct of the official winding-up during the preceding year, and of the trading, showing the time that the business of the company has been carried on, and
- (c) within twenty-eight days after the meeting shall send a copy of the accounts to the Registrar for registration.

Distribution of Assets

43. Disclaimer

(1) Within one year from the commencement of the winding-up, the liquidator may, if of the opinion that the property of the company will not benefit the creditors, by notice published in the *Gazette* disclaim the property, but if a person interested in the property so vested in the liquidator has by application in writing required the liquidator to elect whether the liquidator disclaims the property or not, this subsection shall not apply if the liquidator fails to disclaim within one month after the making of the application or a longer period that the High Court may allow.

(2) The Court may, on the application of a person interested, give that relief and make any other provision that it thinks just in consequence of the disclaimer under subsection (1).

(3) 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, but 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.

44. Fees and outgoings

(1) The liquidator may withdraw from the property of the company sums of money sufficient to satisfy fees of the prescribed amount charged in respect of the costs of the liquidation.

(2) When the fees become due to the liquidator in respect of a company, the liquidator shall cause the fees to be paid by transferring the necessary sums of money from the company's official account to the Fees Account.

(3) When the rent, rates, charges or any other outgoings fall to be met by the liquidator in respect of the company, the liquidator shall cause them to be paid out of the company's official account.

45. Dividends to creditors

(1) Subject to section 44, the liquidator shall from time to time, and as early as practicable, declare and distribute dividends to creditors in accordance with the following rules:

- (a) provision shall be made for the payment in full of the Class A debts before a dividend is declared in respect of Class B debts and so on throughout the classes;
- (b) the debts within one class shall rank simultaneously and equally;

- (c) payment shall be made only in respect of debts which rank for dividends and shall not exceed the values of the dividends;
- (d) where a security held by a creditor has not yet been reduced or surrendered, the value of the debt against which the security is held shall be treated as reduced by the value of the security; and
- (e) interest shall not be allowed in respect of a period after the commencement of the winding-up.

(2) Where a dividend is paid under subsection (1) in respect of a debt which is subsequently struck out and reduced in value by an amendment of the admitted proof, the creditor shall repay to the liquidator the difference between the amount of the dividend and the amount which, in the light of the amendment, should have been paid.

(3) Where a dividend is paid under subsection (1) in respect of a debt and is subsequently increased in value by an amendment of the admitted proof, the liquidator shall, so far as may be practicable, without disturbing dividends already declared, pay to the creditor the difference between the amount of the dividend and the amount which, in the light of the amendment, should have been paid.

(4) Where a creditor has omitted to lodge a proof of debt during the period allowed by this Act, or has omitted a provable debt from the proof, the creditor may, during the liquidation, apply to the High Court for relief, and if the Court is of opinion that the omission was excusable, it shall make an order requiring the liquidator, so far as may be practicable without disturbing dividends already declared, to pay to the creditor the sum of money that would have been payable to the liquidator under this section if the omission had not occurred.

(5) If, at the end of the period of one year following the declaration of a dividend stated by the liquidator to be the final dividend, and payments under that or a previous dividend remains outstanding because the creditors in question cannot be found, the liquidator shall cancel the payments and, unless payment in full has been achieved, shall declare a further dividend in favour of the remainder of the creditors.

(6) In the case of a final dividend, or a further dividend declared under subsection (5), payment of less than four million cedis shall not be required to be made.

(7) Payment under this section shall be in money drawn from the company's official account.

(8) Property which has not been converted into money may be transferred to a creditor in lieu of the equivalent amount of money if the creditor consents.

46. Distribution to members

Subject to this Act, the property of a company shall, on its official winding-up, be applied in satisfaction of its liabilities simultaneously and equally and subject to that application, shall be distributed, unless the Regulations of the company otherwise provide, among the members according to their rights and interests in the company.

47. Disposal of unclaimed assets

Where, after provision is made for the payments and transfers of property under sections 44, 45 and 46, a balance remains in the company's official account, the High Court may direct that the balance shall be transferred to the fees account and may give directions for the disposal of a property not converted into money.

48. Payment out of company's official account

(1) A person is not entitled to a payment in respect of anything done by the liquidator in relation to a company except out of a balance in the company's official account, or out of assets otherwise vested in the liquidator in respect of the company under this Act.

(2) Costs awarded against the liquidator in any proceedings shall be met out of the fees account.

(3) During the continuance of a liquidation under this Act, a person shall not be required, under a contract entered into with the company before the commencement of the winding-up, to supply goods, render services or otherwise perform an obligation unless that person has received an assurance from the liquidator that the company's assets are sufficient to enable the goods or services to be paid for, or the discharge of the obligations otherwise recompensed, in accordance with the terms of the contract.

(4) Despite subsection (1), if an assurance given under subsection (3) proves incorrect, the person to whom the assurance was given is entitled to be re-imbursed out of the fees account.

Termination of Proceedings

49. Order terminating proceedings

(1) The liquidator shall apply to the High Court having completed the winding-up of a company and drawn up the final accounts which have been passed by the Auditor-General, for an order terminating the liquidation proceedings.

(2) The liquidator shall give notice of the application to every creditor with an admitted proof together with a summary of the final accounts.

(3) The liquidator shall send a copy of the final accounts to the Registrar for registration and shall attach to the final accounts a statement showing

(a) that application had been made for an order under section 26, or

(b) that grounds do not exist for an application.

(4) The Court shall, if satisfied with the application by the liquidator, grant the application and the Registrar of the Court shall send a copy of the order made by the Court to the Registrar for registration.

50. Dissolution of company

(1) When satisfied that the official winding-up of a company is complete, the Registrar shall strike the name of the company off the register and notify that fact in the *Gazette*, and the company is, for the purposes of this Act, dissolved as at the date of the publication of the notification in the *Gazette*.

(2) Where a company is dissolved, the High Court may, within two years after the date of the dissolution, on application being made for the purpose by the Registrar or by a former officer, member or creditor of the company, or a person claiming through or under any of them, make an order, on the terms determined by the Court, declaring the dissolution to have been void and ordering the name of the company to be restored to the register.

(3) An office copy of an order made under subsection (2) shall be delivered to the Registrar for registration and the Registrar shall publish the copy in the *Gazette*.

(4) On the publication in the *Gazette*, the name of the company shall be restored to the register and the

company shall be deemed to have continued in existence as if it had not been dissolved.

(5) For the purposes of a period of limitation, time does not run during the period between the dissolution and the restoration.

(6) The Court may give the directions and make the provisions that it considers just for placing the company and any other person in the same position as nearly as may be as if the name of the company had never been struck off.

51. Disposal of books and papers of company

The liquidator shall preserve the books and papers of the company and of the liquidator for a period of five years from the dissolution of the company, and may then destroy the books and papers unless the Registrar otherwise directs, in which event the liquidator shall not destroy those documents until the Registrar has consented in writing to the destruction.

Supplementary Provisions

52. Staying winding-up

(1) The High Court may, after the making of an order for the official winding-up of a company, on the application of the liquidator or a creditor, member or contributory, and on proof to the satisfaction of the Court that the proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings altogether or for a limited time and on the terms and conditions determined by the Court.

(2) On an application under subsection (1) the Court may, before making an order, require a person to furnish to the Court a report with respect to the facts or matters which are in its opinion relevant to the application.

(3) A copy of an order made under subsection (1) shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar who shall make a minute of the order in the books of the Registrar relating to the company.

53. Arresting absconding persons

(1) Where an order for the winding-up of a company is made and before the completion of the liquidation it appears to the High Court that the proceedings of the winding-up are or may be impeded because a member or contributory, an officer of the company or any other person whom the Court considers likely to help in the successful completion of the liquidation or whose conduct is impeding or may impede the winding-up

(a) has absconded or is likely to do so,

(b) has removed, concealed, destroyed or damaged a property or is likely to do so, or

(c) is likely to fail to attend as required before the Court, the liquidator or a meeting of creditors,

then without prejudice to its powers in relation to contempt of court, the Court may issue a warrant for the arrest of that person or the seizure of the property or for both the arrest and the seizure.

(2) Where a warrant of arrest is issued under subsection (1), the provisions of the Criminal and other Offences Procedure Act, 1960 (Act 30) relating to arrest shall apply in the manner that they apply to arrest for a criminal offence, and a person arrested under that warrant may, for the purposes of the winding-up proceedings, be conveyed in custody to a hearing by the Court or the liquidator or to a

meeting of creditors.

(3) Property seized under subsection (1) shall be dealt with as the Court may direct, but the property which does not belong to that person and is not likely to be subject to the powers of the liquidator shall be returned to its owner as soon as is practicable.

54. Offences

(1) A person, other than the liquidator, who does an act in contravention of a duty imposed on that person under this Act, commits an offence and is liable on conviction to a fine not exceeding seven hundred and fifty penalty units or to a term of imprisonment not exceeding three years or to both the fine and the imprisonment.

(2) Subsection (1) is without prejudice to the power of the Court to issue a warrant under section 53, or to punish a person for contempt of court or for an offence under the Criminal Offences Act, 1960 (Act 29).

55. Prosecution of fraudulent or delinquent persons

(1) Where it appears to the High Court in the course of an official winding-up, that a past or present officer or member of the company has been guilty of an offence in relation to the company for which that officer is criminally liable, the Court may, on the application of a person interested in the official winding-up or of its own motion, direct the liquidator to refer the matter to the Attorney-General.

(2) Where it appears to the liquidator in the course of an official winding-up that a past or present officer or member of the company has been guilty of an offence in relation to the company for which that officer or member is criminally liable the liquidator shall forthwith report the matter to the Attorney-General and shall furnish to the Attorney-General, the information and give the Attorney-General access to and facilities for inspecting and taking copies of the documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question that the Attorney-General may require.

(3) Where a report is made under subsection (2) to the Attorney-General, the Attorney-General may refer the matter to the Minister for an enquiry and the Minister shall investigate the matter and may if the Minister thinks it expedient apply to the Court for an order conferring on the Minister or a person designated by the Minister for that purpose with respect to the company concerned, the powers of investigating the affairs of the company that are provided by the Companies Act, 1963 (Act 179).

(4) Where it appears to the Court in the course of an official winding-up that a past or present officer or a member of the company has been guilty of an offence as specified in subsection (2), and that a report with respect to that offence has not been made by the liquidator to the Attorney-General, the Court may, on the application of a person interested in the official winding-up, or of its own motion, direct the liquidator to make that report and on a report being made this section shall have effect as though the report has been made in pursuance of subsection (2).

(5) Where a matter is reported or referred to the Attorney-General under this section, and the Attorney-General considers that the case is one for which prosecution ought to be instituted, the Attorney-General shall institute the prosecution, and the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Attorney-General and the liquidator the assistance in connection with the prosecution which that officer or agent is reasonably able to give.

(6) For the purposes of subsection (5), the expression “**agent**” in relation to a company includes a

banker or solicitor or counsel of the company and a person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) Where a person fails or neglects to give assistance in the manner required by subsection (5), the Court may, on the application of the Attorney-General, direct that person to comply with the requirements of the subsection, and where that application is made with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having at that time sufficient assets of the company to enable the liquidator so to do, direct that the costs of the application shall be borne by the liquidator personally.

56. Inspection of company's books

(1) The High Court may, after the making of a winding-up order, make an order for the inspection of the books and papers of the company by the creditors, members and contributories as the Court thinks just, and the books and papers in the possession of the company may be inspected by the creditors, members or contributories accordingly, but not further or otherwise.

(2) Subsection (1) does not exclude or restrict the statutory rights of a government department or a person acting under the authority of a Government Department.

57. Notification of liquidation

(1) Where a company is being wound up under this Act an invoice, order or a business letter issued by or on behalf of the company which is a document in or on which the name of the company appears, shall contain a statement that the company is being wound up.

(2) An officer of the company and a liquidator, who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding eight million cedis.

58. Exemption from stamp duty

(1) In the official winding-up of a company under this Act, there shall be exempt from duties chargeable under an enactment relating to stamp duties,

- (a) an assurance relating solely to freehold or leasehold property, or to a mortgage, charge or any other encumbrance on, or an estate, a right or an interest in, a real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, at law or in equity, is or remains part of the assets of the company, and
- (b) a power of attorney, proxy paper, writ, an order, a certificate, an affidavit, a bond or any other instrument or writing relating solely to the property of a company which is being so wound up, or to the proceedings under that winding-up.

(2) For the purposes of subsection (1), the expression “**assurance**” includes a deed, conveyance, an assignment and a surrender.

59. Rules and fees

The Minister may, by legislative instrument, make Rules, prescribing fees to be paid under this Act and providing for a matter which under this Act is to be provided for by rules, or which otherwise relates to procedure under this Act.

60. Winding-up of other bodies corporate

Subject to this section and to sections 61 to 64, a body corporate which,

- (a) has or had an office or place of business in the Republic, or
- (b) has assets situated in the Republic,

may be wound up by way of official liquidation under this Act and sections 1 to 59 shall apply to that body corporate as if it were a company.

61. Exclusion of certain bodies corporate

Despite section 60, a body corporate shall not be wound up under this Act if it is

- (a) a firm incorporated under the Incorporated Private Partnerships Act, 1962 (Act 152), or
- (b) a body corporate formed by or under an enactment in the Republic which makes specific provision for the winding-up of bodies corporate formed by or under it.

62. Application to foreign bodies corporate

(1) A body corporate incorporated outside the Republic may be wound up under this Act although it has been dissolved or otherwise ceased to exist under or by virtue of the laws of the country under which it was incorporated.

(2) Where an order is made for the official winding-up of a body corporate incorporated outside the Republic, the High Court may, in the winding-up order or on subsequent application by the liquidator, direct

- (a) that the branch of that body corporate in the Republic shall be treated as a separate body corporate, and
- (b) that the assets and liabilities situate in the Republic shall be treated as the assets and liabilities of that body corporate for the purposes of the winding-up, and
- (c) that the transactions by or with that branch shall be deemed to be validly done although they occurred after the date when the body corporate was dissolved or otherwise ceased to exist under or by virtue of the laws of the country under which it was incorporated.

63. Winding-up by the High Court only

A body corporate shall not be wound up except on a petition to the High Court in accordance with section 4.

64. Grounds for winding-up

(1) In its application to bodies corporate subsection (2) of this section shall be substitute for subsection (2) of section 4.

(2) The High Court may order the official winding-up of a body corporate on a petition if,

- (a) the body corporate is dissolved, or has ceased to carry on business, or is carrying on business only for the purposes of winding up its affairs,
- (b) the body corporate is unable to pay its debts,

- (c) the Court is of the opinion that the business or objects of the body corporate or any of them is or are unlawful, or that the body corporate is being operated for an illegal purpose, or is carrying on a business or operations not authorised by its constitution, or
- (d) the Court is of the opinion that it is just and equitable that the body corporate should be wound up,

and in determining whether the body corporate is unable to pay its debts subsection (3) of section 3 shall apply.

Miscellaneous

65. Regulations

The Minister may, by legislative instrument, make Regulations for a thing or matter that may or needs to be prescribed under this Act and for the better carrying into effect of this Act.

66. Interpretation

In this Act, unless the context otherwise requires,

“body corporate” means a corporation incorporated in the Republic or elsewhere, which is not a company or a corporation solely in the nature of an incorporated office;

“company” has the same meaning as in the Companies Act, 1963 (Act 179) or a statutory re-enactment or modification of that Act;

“contributory” includes a person liable to contribute to the assets of a company in the event of its being wound up, and a person alleged to be a contributory for the purposes of the proceedings for determining, and the proceedings prior to the final determination of, the persons who are to be deemed to be contributories;

“functions” includes powers and duties;

“Minister” means the Minister responsible for Companies;

“official winding-up” means a winding-up under this Act;

“property” means movable or immovable property;

“provable debt” means an obligation, the value of which is capable of assessment in money, being

- (a) an obligation which, apart from this Act, would have been enforceable by the creditor against the company at the date on which the winding-up commenced, or
- (b) an existing or a future obligation, other than an obligation unenforceable by virtue of the law relating to limitation of actions, which by reason of a transaction which took place before that date, might, apart from this Act, have become enforceable by the creditor against the company after that date,

and a reference in this Act to the value of a provable debt is a reference of its value apart from this Act on that date;

“Registrar” means the Registrar of Companies.

67. Commencement

Spent.4(4)



Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 3rd July, 1963.

2 (Popup - Footnote)

2. [P.N.D.C.L. 327](#).

3 (Popup - Footnote)

3. No. 2 of 1918 and [Cap. 175](#) of the 1951 Edition.

4 (Popup - Footnote)

4. The section provided that the Act shall come into operation at the same time as the Companies Code, 1963 ([Act 179](#)).