

Ghana

## Bodies Corporate (Official Liquidations) Act, 1963

Act 180 of 1963

Legislation as at 1 July 1963

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## Ghana

# Bodies Corporate (Official Liquidations) Act, 1963

## Act 180 of 1963

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**Assented to on 3 July 1963**

**Commenced on 1 July 1963**

*[This is the version of this document from 1 July 1963.]*

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

BE IT ENACTED by the President and the National Assembly in this present Parliament assembled as follows:—

### Part I – Official liquidation of companies

#### 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 to the Court; or
  - (d) a conversion from a private liquidation.
- (2) The provisions of this Part of this Act, with respect to winding up, unless the contrary intention appears, shall apply to the winding up of a company in any of the modes specified in the preceding subsection.

##### 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 thereof shall be sent, immediately thereafter as may be practicable, to the Registrar who shall publish the same in the *Gazette*.

##### 3. Procedure on petition to Registrar

- (1) Any 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:  
Provided that,

- (a) in the case of a company with shares a member shall not be entitled to present a winding up petition unless his shares, or some of them, either were originally allotted to him or have been held by him, and registered in his name for at least six months during the eighteen months preceding the date of the presentation of the petition or have devolved on him by operation of law;
  - (b) the Registrar shall not consider a winding up petition presented by a contingent or prospective creditor unless such security for costs has been given as the Registrar thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Registrar.
- (2) The Registrar may order the official winding up of the company on such petition if satisfied that the company is unable to pay its debts.
- (3) A company shall be deemed to be unable to pay its debts,
  - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company a written demand requiring the company to pay the sum so due and the company has for twenty-one days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
  - (b) if in Ghana execution or other process issued on a judgment, decree or order of any 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.
- (4) A copy of the petition shall be served on the company by the petitioner on or before the day on which it is presented.
- (5) 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 the petitions so presented.
- (6) No further petition shall 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.
- (7) 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 Court

- (1) The Registrar or any 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 ground specified in paragraph (c) of subsection (2) of this section,may present a petition to the Court for the official winding up of the company.
- (2) The Court may order the official winding up of a company on such petition where,
  - (a) the company does not within a year from its incorporation commence to carry on all the businesses which it is authorised by its Regulations to carry on or suspends any of such businesses for a whole year;
  - (b) the company has no 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 the provisions of subsection (3) of section 3 of this Act shall apply.
- (4) On the hearing of a winding up petition the Court may dismiss or adjourn the hearing conditionally or unconditionally or make an 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.
- (5) Where the petition is presented by members or contributories of the company on the ground that it is just and equitable that the company should be wound up, the Court, if it is of the opinion,
- (a) that the petitioners are entitled to relief either 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, both that some other 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 Court to the Registrar who shall make a minute thereof in his books relating to the company and publish it in the *Gazette*.
- (7) Subject to the provisions of this section the 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 the provisions of section 258 of the [Companies Code, 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 the preceding subsection shall be accompanied by a statement in the prescribed form of the company's assets and liabilities.
- (3) For the purposes of this section any proceedings taken on a private liquidation shall, unless, the Court otherwise directs, be deemed to have been validly taken.

## 6. Stay of proceedings

- (1) On the commencement of winding up proceedings against a company all civil proceedings against the company shall be stayed and any transfer of shares of the company shall be void.
- (2) During the interval between the presentation of a petition for an official winding up and the commencement of the winding up, the Court may, on application being made by a party thereto or the Registrar stay any proceedings by or against the company or in respect of its property; and accordingly any disposition of the property of the company, including things in action and any transfer of shares shall, unless the Court otherwise directs, be void.

## The liquidator

### 7. Registrar as liquidator

The Registrar shall be the liquidator in any official winding up under this Part of this Act.

### 8. Status of liquidator

- (1) In an official winding up under this Act the liquidator shall be deemed to stand in a fiduciary relationship to the company as if he were a director thereof; and accordingly the provisions of sections 203 to 216 of the [Companies Code, 1963](#) (Act 179) shall apply to the liquidator in like manner and to the like extent as they apply to a director.
- (2) No liability shall attach to the liquidator in respect of any breach of duty imposed upon him by or under this Act and no liability shall attach to the Republic in respect of any such breach, save for the re-imbusement of any moneys lost to the company through the default of the liquidator.
- (3) Nothing in this section shall affect the institution against a public officer of any criminal proceedings or of disciplinary proceedings under the Civil Service Act, 1960 (C.A. 5).

### 9. Powers of liquidator

- (1) The liquidator in an official winding up under this Act shall have power,
  - (a) to bring or defend any action or other legal proceedings in the name and on behalf of the company;
  - (b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;
  - (c) to appoint a legal practitioner to assist him in the performance of his duties;
  - (d) to pay any classes of creditors in full;
  - (e) to make any compromise or arrangement, subject to the provisions of section 231 of the [Companies Code, 1963](#), (Act 179) with creditors or persons claiming to be creditors or being or alleging themselves to have any 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) to compromise 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 all questions in any way relating to or affecting the assets or the 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 thereof;
  - (g) to 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 thereof to any person or company or to sell the same in parcels;
  - (h) to 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;
  - (i) to prove and rank the claims in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to 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) to 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;
- (k) to raise on the security of the assets of the company any money requisite;
- (l) to take out in his official name letters of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment for any money due from the contributory or his estate which cannot be conveniently done in the name of the company, and in all such 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 himself;
- (m) to do all such other things as may be necessary for winding up the affairs of the company and the distribution of its assets.

## 10. Delegation of functions

- (1) Any 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 any public officer for the time being authorised in that behalf either 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) Any reference to the liquidator in any enactment shall be taken to include any public officer authorised or presumed to be authorised under the provisions of the preceding section.
- (3) Where he considers it necessary for the exercise of his functions the liquidator may avail himself for appropriate payment of the services of persons who are not public officers.

## 11. Powers of Court

- (1) Any person aggrieved by an act done by the liquidator in the exercise of his functions under this Act may appeal to the Court which shall make such order as it thinks fit.
- (2) Where any person refuses or fails to comply with a requirement made by the liquidator under this Act the liquidator may apply to the Court and the Court may order the requirements to be carried out.
- (3) Where the liquidator is in doubt as to any matter in connection with his functions under this Act he 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 all moneys received by the liquidator under this Act and to which shall be debited all moneys disbursed by him thereunder.
- (2) There shall be an account within the Liquidation Fund, to be known as the fees account, to which shall be credited all moneys received by the liquidator by way of fees and other charges.
- (3) All 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 shall be deemed to have commenced on the passing of a resolution for the winding up of the company or 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, all the functions of the directors of the company shall vest, without further authority than this section, in the liquidator, save in so far as the liquidator sanctions the continuance thereof.

### 15. Cessation of company's business

On the commencement of a winding up, the company shall cease to carry on its business, except so far as may be required for the beneficial winding up thereof, so however that the corporate state and the corporate powers of the company shall, notwithstanding anything to the contrary in its Regulations, continue until the company is dissolved.

### 16. Custody of company's property

- (1) Save 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 the provisions of the preceding subsection, the liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.
- (3) Any 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, at any time after the commencement of a winding up, require any member or contributory and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such reasonable time as the liquidator may direct, to the liquidator any money, property or books and papers in his hands to which the company is *prima facie* entitled.

### 17. Prohibition on civil proceedings

On the commencement of a winding up, no action or civil proceedings against the company, other than proceedings by a secured creditor for the realization of this security, shall be proceeded with or commenced save by leave of the Court and subject to such terms as the Court may impose.

### 18. Avoidance of transfer of shares, etc.

Any transfer of shares, not being a transfer made to or within the sanction of the liquidator made after the commencement of a winding up, shall be void.

## Investigation into affairs of company

### 19. Statement of affairs

- (1) There shall, within fourteen days or such other period as 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 all the assets of the company;
  - (b) the debts and liabilities of the company including particulars of the company's transactions during such period as 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) such further or other information as 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 such of the persons hereinafter in this subsection mentioned as 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;
  - (d) who are or have been within one year from 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) Any 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, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the liquidator may consider reasonable subject to an appeal to the Court.
- (4) Any person who without reasonable excuse makes default in complying with the requirements of this section commits an offence and shall be liable to a fine not exceeding ten pounds for every day during which the default continues.
- (5) Any person stating himself in writing to be a creditor, member or a contributory of the company shall be entitled by himself or by his agent at all reasonable times on payment of the prescribed fees to inspect the statement submitted in pursuance of this section and to a copy thereof or an extract therefrom.
- (6) Any person who untruthfully states himself in writing to be a creditor, member or a contributory of the company commits the offence of contempt of court and shall, on the application of the liquidator, be punishable accordingly.

## 20. Settlement of list of contributories

- (1) As soon as may be after the making of a winding up order the liquidator shall settle a list of contributories with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in the discharge of its liabilities.
- (2) Subject to the provisions of the preceding subsection, 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 shall create a debt in the nature of a specialty accrued due from him at the time when his liability commenced but payable at the times calls are made for enforcing the liability.
- (5) Where a contributory dies either before or after the settlement of the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be deemed to be contributories accordingly.
- (6) Where the personal representatives are placed on the list of contributories and they make default in the payment of any moneys ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the moneys due.
- (7) If a contributory becomes bankrupt, either before or after the settlement of the list of contributories,
  - (a) his trustee in bankruptcy shall represent him for all 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 his assets in due course of law, any moneys due from the bankrupt in respect of his liability to contribute to the assets of the company; and
  - (b) there may be proof against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.
- (8) Subject to the other provisions of this section, when all the creditors of the company are paid in full, any moneys due on any account whatever to a contributory from the company may be allowed to the contributory by way of set-off against any subsequent call.
- (9) Where a company is being wound up, all books and papers of the company and of the liquidator shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

## 21. Rectification of register of members

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

## 22. Proof of debt

- (1) During the continuance in force of a winding up order any creditor of a company may lodge with the liquidator a statement, to be known as a proof of debt, in accordance with the provisions of 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 his favour against the company and the nature and value of any securities held by the creditor in respect of such debts;
  - (b) the values and due dates of any 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 such obligations as are mentioned in the immediately preceding paragraph;
  - (d) the total values of the aforesaid debts, obligations and securities;and the second part containing details of the transactions from which such debts and obligations arose.
- (3) A copy of the first part of any 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, himself lodges a proof; and if the company knows or believes that the proof is false in any material particular, it shall be the duty of the company to inform the liquidator as soon as may be practicable.
- (4) The liquidator shall examine every proof of debt lodged with him and if, after considering any representations made by the company or any other creditor, it appears to him that any item is improperly included or any value incorrectly stated or that the proof is otherwise incorrect he shall give notice of the objection to the creditor who may lodge an amended proof within the period specified in the notice or such period as the liquidator may allow.
- (5) Where the liquidator is satisfied with a proof of debt he shall give notice to the creditor that he admits the proof of debt subject to verifications under section 39 of this Act.
- (6) Where a creditor fails to lodge an amended proof of debt or a further amended proof of debt, as the case may be, within the period allowed under the provisions of subsection (4) of this section, and the liquidator is still of opinion that the previous proof of debt is incorrect he shall give notice to the creditor that he 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 any 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 such notice of the meeting as 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 any proposals for an arrangement with creditors lodged by him, together with any observations thereon that the liquidator may wish to make.
- (3) The liquidator shall put to the meeting such questions as he considers appropriate; and where the company has proposed an arrangement with creditors the meeting shall be asked to approve or reject such proposal.
- (4) An arrangement with creditors shall not be taken to be 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 any meeting of creditors of a company the meeting shall not be competent to act for any purpose unless at least three creditors with admitted proofs of debt, or all such creditors if they are less than three, are present either in person or by representatives holding proxies.
- (7) Where there is no quorum within half an hour after the time appointed for the meeting of creditors, the liquidator shall adjourn the meeting to such date as he may determine not being less than seven nor more than fourteen days thereafter; and if there is still no quorum 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 the immediately preceding subsection shall not prevent the Court from considering and determining any matter as if the meeting had been held and closed on the day on which it was cancelled.
- (9) The provisions of the immediately preceding subsection shall not be deemed to authorise the Court to confirm an arrangement with creditors which has not been approved by the first meeting of creditors.
- (10) The meeting of creditors shall be presided over by the liquidator and at any such meeting each creditor with an admitted proof shall be entitled to be heard either in person or by a representative holding a proxy.
- (11) Save as otherwise provided in this Act, questions at a meeting of creditors shall be decided by a simple majority of votes cast and each creditor with an admitted proof shall be entitled to one vote for each complete pound of the net amount of his debt as shown in his 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, if any, 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;
  - (c) the amount of every dividend to which the creditor has become entitled.

#### **24. Private examination by the Court**

- (1) The liquidator may at any time after the making of a winding up order summon before the Court any officer of the company or person known or suspected of having in his possession any property of the company or supposed to be indebted to the company, or any person whom the liquidator deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.
- (2) The Court may examine any such person on oath concerning the matters specified in the preceding subsection either by word of mouth or on written interrogatories and may reduce his answers to writing and require him to sign them.
- (3) The Court may require any such person to produce any books and papers in his custody or power relating to the company, so however that where he claims any lien on books or paper produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the official winding up to determine all questions relating to that lien.
- (4) If any person so summoned, after being tendered a reasonable sum for his 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 cause him to be apprehended and brought before the Court for examination.

## 25. Examination of fraudulent or delinquent persons

Whenever it appears to him to be necessary so to do, the liquidator shall apply to the Court for an enquiry into the conduct of any person as regards his activities in relation to the company.

## 26. Order against fraudulent or delinquent persons

- (1) If in the course of the official winding up of a company it appears that any 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 any fraudulent purpose, the Court may, on the application of the liquidator or of any creditor, member or contributory of the company, if it thinks fit so to do, declare that the persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.
- (2) On the hearing of an application under the preceding subsection the liquidator may himself give evidence or call witnesses.
- (3) Where the Court makes a declaration, it may give such other directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or any person on his behalf, or any person claiming as an assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.
- (4) For the purposes of this section, the expression "assignee" includes any 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 does not include an assignee, for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any matters on the grounds of which the declaration is made.
- (5) Whenever the business of a company is carried on at a time when to the knowledge of the directors of the company, the company had no reasonable prospect of paying its debts as they fall due any such business shall be deemed to have been carried on with intent to defraud the creditors of the company.

## 27. Consequences of order

- (1) Where any business of a company is carried on with such intent and for such purposes as is mentioned in subsection (1) of section 26 of this Act, every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred pounds or to both such imprisonment and fine.
- (2) The provisions of this section and of section 26 of this Act shall have effect notwithstanding that 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 of this Act is made the declaration shall be deemed to be a final judgment of the Court.

## Assets available for winding up

## 28. Property in liquidator's custody or control

Any property of the company in the custody of the liquidator by virtue of the provisions of section 16 of this Act shall be made available by him 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 any payment or other transfer of property, or
- (b) paid any mortgage or other charge, or
- (c) suffered any 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 such 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 his being preferred.

## 30. Restoration of property, etc.

- (1) On the commencement of a winding up every person who during the relevant period received a payment of money or other transfer of property in respect of a debt owed to him 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 the immediately preceding subsection 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) The provisions of subsection (1) of this section shall not apply to any payment or 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 all property in the possession of the sheriff at the time of the making of the winding up order, being property of which possession was taken under an execution issued by a creditor of the company or the proceeds of such 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 of this Act or under subsection (1) of this section he may, within one month after the notice was given, lodge a proof of debt or require the liquidator to amend his proof, as the case may be, 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 his compliance.

## 31. Repayment of gifts

- (1) Where it appears to the liquidator that the company made any disposition of its property otherwise than for full value or in settlement of any due debt or incurred any 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 thereby accrued to him above the value of any consideration provided.

- (2) Excess benefit restored under this section shall, save where a director of a company commits a breach of duty under the provisions of sections 203 to 205 of the [Companies Code, 1963](#) (Act 179), be treated as a provable debt in respect of which a proof may be lodged at any time within one month after its restoration.

### 32. Payment by money lenders

Where, at any time 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, any sum was paid or allowed by the company in respect of a loan in circumstances such that the Court would, if proceedings had been brought under the provisions of section 3 of the Loans Recovery Ordinance (Cap. 175), have ordered the lender to make a repayment to the company, the liquidator may give notice to the lender requiring him, within the period specified in the notice, to make a like payment to the liquidator.

### 33. Avoiding of assignment and floating charges

- (1) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.
- (2) Any property covered by the preceding subsection or a floating charge invalidated under section 90 of the [Companies Code, 1963](#) (Act 179) shall be dealt with as part of the general assets of the company.

### 34. Call on contributories

- (1) The liquidator may, at any time after the making of a winding up order, and either 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, for payment of any 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 make an order for payment of any 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 any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank specified by him or any branch thereof to the account of the liquidator instead of to the liquidator, and any such 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 the provisions of this section 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.
- (5) Any call made by the liquidator under subsection (1) of this section shall, for the purposes of recovering any sum due, have the same effect as an order of the 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 he is liquidator and shall credit to such an account,
  - (a) all moneys received by him in respect of the company by virtue of the preceding provisions of this Act;
  - (b) payments made to him in respect of the company for the purpose of increasing the assets available for dividend;
  - (c) repayments in respect of excess dividends made under subsection (2) of section 45 of this Act.
- (2) If on the application of the company or of any creditors it appears to the liquidator before the termination of the liquidation that assets have been lost to the estate by reason of any default by the liquidator, the Court may order that the company's official account be credited with such sum as may appear to the Court to be just and that an equivalent sum be debited to the fees account.

### General duties of liquidator in administration of company's property

#### 36. Duty to collect debts

On the commencement of the winding up of a company it shall be the duty of the liquidator to secure the payment to him or other discharge of all debts and other obligations the right to which has passed to him under the provisions of section 16 of this Act.

#### 37. Duty to vest property in liquidator

On the commencement of a winding up the liquidator may by notice in the *Gazette* direct that all property or any part of the property of whatsoever description belonging to the company or held by trustees on behalf of the company shall vest in him by his official name, and thereupon the property to which the notice relates shall vest accordingly, and the liquidator may bring or defend in his official name any acts or 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. Duty to realise assets

On the commencement of a winding up it shall be the duty of the liquidator to realise as soon as practicable all assets not held as cash by such means and for such return as will produce for distribution to the creditors of the company sums representing the full value of the assets:

Provided that this section shall not be taken to require the realization of any assets which cannot be readily or advantageously disposed of.

#### 39. Duty to verify debts ranking for dividends

- (1) At the conclusion of the first meeting of creditors or, if no such meeting were held, as soon as practicable after the admission of proof of debt under section 22 of this Act, it shall be the duty of the liquidator to take such steps as are practicable to verify the correctness of every admitted proof.
- (2) If, when the winding up order is made, creditors' obligations such as are mentioned in section 22 of this Act 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 said debt shall be *pro rata* reduced;

- (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 said 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 realized within the period specified in the notice, which shall not be less than six months, it shall be treated as surrendered.
- (4) Subject to the provisions of this Part of this Act, 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. Duty to amend admitted proofs

- (1) If 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 shall be subject to amendment for the purpose of altering the value shown therein to give effect to the change.
- (2) If 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 shall be subject to amendment for the purpose of rectifying the incorrectness.
- (3) If a creditor desires to withdraw his claims to the whole or a part of a debt included in an admitted proof, the proof shall be subject to amendment for the purpose of deleting the debt or reducing its value accordingly, as the case may be.
- (4) Where an admitted proof is subject to amendment under the provisions of this section,
  - (a) the liquidator may, save in the case of an amendment under the immediately preceding subsection, give notice to the creditor specifying the proposal and inviting him to consent to it within the period specified in the notice; or
  - (b) the creditor may, if the liquidator has not given his notice as aforesaid, give notice to the liquidator specifying the proposed amendment and, except in the case of amendment under the immediately preceding subsection, inviting him to consent to it within the period specified in the notice.
- (5) Where notice of a proposed amendment is given under the immediately preceding subsection, the liquidator shall amend the proof accordingly if,
  - (a) the party to whom the notice is given consents to the amendment,
  - (b) consent is not given but, on an appeal by the creditor or on application by the liquidator the Court orders the amendment to be made, or
  - (c) the amendment is proposed by the creditor under subsection (3) of this section.

#### 41. Duty to ascertain priority of debt

- (1) On the commencement of a winding up it shall be the duty of the liquidator, in relation to each debt which ranks for dividend, to ascertain into which class the whole or any 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, that is to say,
    - (i) remuneration not exceeding one hundred and fifty pounds owed to an employee of the company in respect of employment during the whole or any 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 part of a debt which does not fall within any other class;
  - (c) class C, that is to say, a debt or part of a debt which does not fall within class D and is, or was at any time 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 any such director or former director;
  - (d) class D, that is to say, a debt or part of a debt which answers either of the following descriptions, that is to say,
    - (i) excess benefit restored to the liquidator under section 31 of this Act;
    - (ii) excess interest that is any portion of a debt which whether it is stated to do so or not represents interest at a rate in excess of seven *per centum per annum*.
- (3) Class A debts shall have priority over the claims of holders of debentures under any floating charge credited by the company and shall be paid accordingly out of any property composed in or subject to such charge.

#### 42. Duty to consult creditors and members

- (1) Subject to the provisions of this Act, it shall be the duty of the liquidator,
- (a) to report to the creditors at intervals not greater than six months on the progress of the liquidation;
  - (b) to consult the creditors on the matters arising in the proceedings which substantially affect their interest;
  - (c) to give effect, so far as may be practicable, to any views expressed by the creditors in relation to the realization and distribution of assets.
- (2) For the purpose of complying with the preceding subsection the liquidator may call a meeting of creditors at any time, and shall call such 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) The provisions of subsections (6) to (12) of section 23 of this Act shall apply in relation to every meeting of creditors called under this section.
- (4) Subject to the provisions of this section, in the event of an official winding up continuing for more than one year, the liquidator 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 such longer period as the Minister may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the official winding up during the preceding year, and of the trading, showing such time as the business of the company has been carried on, and within twenty-eight days thereafter shall send a copy of such 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 he is of the opinion that the property of the company will not be of benefit to the creditors, by notice published in the *Gazette* disclaim the property, so however that if any person interested in the property so vested in the liquidator has by application in writing required the liquidator to elect whether he 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 such longer period as the Court may allow.
- (2) The Court may, on the application of any person interested give such relief and make such other provision as it thinks just in consequence of the disclaimer under this section.
- (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 shall be entitled to withdraw from the property of the company sums sufficient to satisfy fees of the prescribed amount charged in respect of the costs of the liquidation.
- (2) When any fees become due to the liquidator in respect of a company, the liquidator shall cause such fees to be paid by transferring the necessary sums from the company's official account to the fees account.
- (3) When any rent, rates, charges or 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 the provisions of the immediately preceding section, the liquidator shall from time to time, and as early as practicable, declare and distribute dividends to creditors in accordance with following rules, that is to say,
  - (a) provision shall be made for the payment in full of all class A debts before any dividend is declared in respect of class B debts and so on throughout the classes;
  - (b) all debts within one class shall rank *pari passu*;
  - (c) payment shall be made only in respect of debts which rank for dividends and shall not exceed the values thereof;
  - (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;
  - (e) interest shall not be allowed in respect of any period after the commencement of the winding up.
- (2) Where a dividend has been paid under this section 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 has been paid under this section 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 his proof, he may at any time during the liquidation apply to the 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 such sum as would have been payable to him 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, any payments under that or any previous dividend remain 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 the immediately preceding subsection, no payment of less than ten pounds shall be required to be made.
- (7) Payment under this section shall be in money drawn from the company's official account:

Provided that 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 the provisions of this Act, the property of a company shall, on its official winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the Regulations of the company otherwise provide, be distributed among the members according to their rights and interests in the company.

#### **47. Disposal of unclaimed assets**

Where, after provision has been made for all payments and transfers of property under the three immediately preceding sections, any balance remains in the company's official account, the Court may direct that any such balance shall be transferred to the fees account and may give directions for the disposal of any property not converted into money.

#### **48. Payment out of companies official fund**

- (1) No person shall be entitled to any payment in respect of anything done by the liquidator in relation to a company except out of any balance in the company's official account or out of assets otherwise vested in the liquidator in respect of the company under this Part of this Act:

Provided that if in any proceedings costs are awarded against the liquidator they shall be met out of the fees account.

- (2) During the continuance of a liquidation under this Act, no person shall 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 he 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 performance of the obligations otherwise recompensed, in accordance with the terms of the contract.
- (3) Notwithstanding the provisions of subsection (1) of this section, if an assurance given under the immediately preceding subsection proves incorrect, the person to whom the assurance was given shall be entitled to be re-imbursed out of the fees account.

#### 49. Order terminating proceedings

- (1) The liquidator shall, when he has completed the winding up of a company and his final accounts have been drawn up and have been passed by the Auditor-General, apply to the Court for an order terminating the liquidation proceedings.
- (2) The liquidator shall give notice of his application to the Court and to every creditor with an admitted proof together with a summary of the final accounts.
- (3) The liquidator shall send a copy of his final accounts to the Registrar for registration and he shall attach thereto a statement showing that,
  - (a) application had been made for an order under section 26 of this Act, or
  - (b) in his opinion there were no grounds for such 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 the Registrar is satisfied that the official winding up of a company is complete he shall strike the name of the company off the register and notify the same in the *Gazette*; and the company shall, thereupon, be deemed to be dissolved as at the date of the publication of the notification in the *Gazette*.
- (2) Where a company has been dissolved, the Court may, at any time within two years after the date of the dissolution, on application being made for the purpose by the Registrar or by any former officer, member or creditor of the company, or any person claiming through or under him, make an order, upon such terms as the Court thinks fit, 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) of this section, shall be delivered to the Registrar for registration and he shall cause the same to be published in the *Gazette*; and thereupon 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, except that for the purpose of any period of limitation, time shall not be deemed to run during the period between the dissolution and the restoration.
- (4) The Court may, by order give such directions and make such provisions as seem just for placing the company and all other persons 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 thereafter may destroy such books and papers unless the Registrar shall otherwise direct, in which event the liquidator shall not destroy the same until the Registrar shall have consented thereto in writing.

### Supplementary provisions

#### 52. Power to stay winding up

- (1) The Court may at any time after the making of an order for the official winding up of a company, on the application either of the liquidator or any creditor, member or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed,

make an order staying the proceedings either altogether or for a limited time and on such terms and conditions as the Court thinks fit.

- (2) On any application under this section the Court may, before making an order, require any person to furnish to the Court a report with respect to any facts or matters which are in its opinion relevant to the application.
- (3) A copy of every order made under this section 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 his books relating to the company.

### **53. Power to arrest absconding persons**

- (1) Where an order for the winding up of a company has been made and before the completion of the liquidation it appears to the Court that the proceedings of the winding up are or may be impeded by reason that 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 any property or is likely to do so, or
  - (c) is likely to fail to attend as required before the Court, the liquidator or any 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 any such person or the seizure of the property in question or for both such arrest and seizure.

- (2) Where a warrant of arrest is issued under this section the provisions of the Criminal Procedure Code, 1960 (Act 30) relating to arrest shall apply in the same way as they apply to arrest for a criminal offence; and any person arrested under such warrant may, for the purposes of the winding up proceedings, be conveyed in custody to any hearing by the Court or the liquidator or to any meeting of creditors.
- (3) Property seized under this section shall be dealt with as the Court may direct, so however that property which does not belong to any such person and is not likely to be subject to the powers of the liquidator shall be returned to its owners as soon as is practicable.

### **54. Offences**

- (1) Any person other than the liquidator who does any act in contravention of a duty imposed upon him under this Act commits an offence and shall be liable to a fine not exceeding three hundred pounds or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.
- (2) This section shall be without prejudice to the power of the Court to issue a warrant under section 53 of this Act or to punish any person for contempt of court or for an offence under the Criminal Code, 1960 (Act 29).

### **55. Prosecution of fraudulent or delinquent persons**

- (1) If it appears to the Court in the course of an official winding up, that any past or present officer or member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the official winding up or of its own motion, direct the liquidator to refer the matter to the Attorney-General.
- (2) If it appears to the liquidator in the course of an official winding up that any past or present officer or member of the company has been guilty of any offence in relation to the company for which he is criminally liable he shall forthwith report the matter to the Attorney-General and shall furnish

to the Attorney-General, such information and give him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question as he may require.

- (3) Where any report is made under the immediately preceding subsection to the Attorney-General he may, if he thinks fit, refer the matter to the Minister for an enquiry and the Minister shall thereupon investigate the matter and may if he thinks it expedient apply to the Court for an order conferring on the Minister or any person designated by the Minister for the purpose with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by the [Companies Code, 1963](#) (Act 179).
- (4) If it appears to the Court in the course of an official winding up that any past or present officer or any member of the company has been guilty as aforesaid and that no report with respect thereto has been made by the liquidator to the Attorney-General under subsection (2) of this section, the Court may, on the application of any person interested in the official winding up, or of its own motion, direct the liquidator to make such a report and on a report being made accordingly, the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of subsection (2) of this section.
- (5) Where any matter is reported or referred to the Attorney-General under this section, and he considers that the case is one for which prosecution ought to be instituted, he shall institute proceedings accordingly; and it shall be the duty of the liquidator and of every officer and agent of the company past and present, other than the defendant in the proceedings, to give him all assistance in connection with the prosecution which he is reasonably able to give.
- (6) For the purposes of the immediately preceding subsection the expression “agent” in relation to a company shall be deemed to include any banker or solicitor or counsel of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.
- (7) If any person fails or neglects to give assistance in manner required by subsection (5) of this section, the Court may, on the application of the Attorney-General, direct that person to comply with the requirements of the said subsection, and where any such 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 in his hands sufficient assets of the company to enable him 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 Court may, at any time after the making of a winding up order, make such order for the inspection of the books and papers of the company by creditors, members and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors, members or contributories accordingly, but not further or otherwise.
- (2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a Government department or any person acting under the authority of a Government department.

## 57. Notification of liquidation

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

- (2) Any officer of the company and any liquidator, who fails to comply with the provisions of this section commits an offence and shall be liable to a fine not exceeding twenty pounds.

*[Please note: Numbering as in original.]*

## 58. Exemption from stamp duty

- (1) In the official winding up of a company under this Part of this Act,
  - (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and
  - (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceedings under any such winding up,shall be exempt from duties chargeable under any enactment relating to stamp duties.
- (2) In this section the expression “assurance” includes deed, conveyance, assignment and surrender.

## 59. Rules and fees

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

## Part II – Official liquidation of other bodies corporate

### 60. Winding up of other bodies corporate

Subject to the provisions of this Part of this Act, any body corporate which,

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

may be wound up by way of official liquidation under this Act and all the provisions of Part I of this Act shall apply to such body corporate as if it were a company.

### 61. Exclusion of certain bodies corporate

Notwithstanding the provisions of the immediately preceding section the following bodies corporate shall not be wound up under this Act; namely,

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

### 62. Application of foreign bodies corporate

- (1) A body corporate incorporated outside Ghana may be wound up under this Act notwithstanding that 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 Ghana the Court may, if it thinks fit, either in the winding up order or on subsequent application by the liquidator, direct that the branch of such body corporate in Ghana shall be treated as a separate body corporate and that only the assets and liabilities situate in Ghana shall be deemed to be the assets and liabilities thereof, and may further direct that all transactions by or with such branch shall be deemed to be validly done notwithstanding that 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 Court only

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

### 64. Grounds for winding up

In its application to bodies corporate the following shall be substituted for subsection (2) of section 4 of this Act:

- “(2) The Court may order the official winding up of a body corporate on such petition if,
- (a) the body corporate is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose 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 are unlawful or that the body corporate is being operated for any 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 the provisions of subsection (3) of section 3 of this Act shall apply”.

## Part III – Miscellaneous

### 65. Regulations

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

### 66. Interpretation

In this Act unless the context otherwise requires,

“**body corporate**” means a corporation incorporated in Ghana or elsewhere, not being a company or a corporation sole such as an incorporated office;

“**company**” has the same meaning as in the [Companies Code, 1963](#) (Act 179);

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

“**Court**” means the High Court;

“**Minister**” means the Minister responsible for companies;

“**official winding up**” means a winding up under Part I of 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) any 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) any existing or future obligation, other than an obligation unenforceable by virtue of the law relating to limitation of actions, which, by reason of some

transaction which took place before the said date, might, apart from this Act, have become enforceable by the creditor against the company after that date,

and references in this Act to the value of a provable debt shall be references to its value apart from this Act on the said date;

“**Registrar**” means the Registrar of companies.

## 67. Commencement

This Act shall come into operation at the same time as the [Companies Code, 1963](#) (Act 179)