

Tab 15

This is Exhibit "15" referred to in the Affidavit of Paul Robert
Appleton sworn August ...⁶....., 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement ("Agreement") is made and effective [DATE],

BETWEEN: _____ (the "Independent Contractor"),
a company organized and existing under the laws of the _____
of _____ or a resident of the said
province/state/Country with its head office and/or residence located at:

AND: **Banners Broker International** (the "Company"), a company organized and
existing under the laws of the Isle of Mann with its head office located at:

Kissack Court
29 Parliament Street
Ramsey, Isle of Mann
IM8 1AT

RECITALS

Independent Contractor is engaged in providing training and support business services, its Employer Tax I.D. Number is _____ and its Business License Number is _____. Independent Contractor has complied with all Federal, State/Provincial/County, and local laws or the country of _____ regarding business permits, sales permits, licenses, reporting requirements, tax withholding requirements, and other legal requirements of any kind that may be required to carry out said business and the Scope of Work which is to be performed as an Independent Contractor pursuant to this Agreement. Independent Contractor is or remains open to conducting similar tasks or activities for clients other than the Company and holds themselves out to the public to be a separate business entity.

Company desires to engage and contract for the services of the Independent Contractor to perform certain tasks as set forth below. Independent Contractor desires to enter into this Agreement and perform as an independent contractor for the company and is willing to do so on the terms and conditions set forth below.

Independent Contractor Application Process:

- | | |
|--------|--|
| Step 1 | Complete Independent Contractor Application
Must complete one per Owner, Director and/or Officer |
| Step 2 | Applicant(s) must submit Articles of Incorporation documents |
| Step 3 | Completed criminal background check documents per Owner, Director and/or Officers
Corporation must be submitted |
| Step 4 | Completed Business Plan must be submitted to Banners Broker International
<i>see attached business plan as an example of what is expected</i> |
| Step 5 | Applicant will make arrangements with Kul Josun (VP of Sales) for the payment |
| Step 6 | Wait for Banners Broker International approval |

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and conditions contained in this Agreement, the Parties agree as follows:

1. TERMS

This Agreement shall be effective commencing the 1st day of June, 2012 and shall continue until terminated by either party by written notification to the other or as otherwise provided herein.

2. STATUS OF INDEPENDENT CONTRACTOR

This Agreement does not constitute a hiring by either party. It is the parties intentions that Independent Contractor shall have an independent contractor status and not be an employee for any purposes. Independent Contractor shall retain sole and absolute discretion in the manner and means of carrying out their activities and responsibilities under this Agreement. This Agreement shall not be considered or construed to be a partnership or joint venture, and the Company shall not be liable for any obligations incurred by Independent Contractor unless specifically authorized in writing. Independent Contractor shall not act as an agent of the Company, ostensibly or otherwise, nor bind the Company in any manner, unless specifically authorized to do so in writing.

3. TASKS, DUTIES, AND SCOPE OF WORK

A. CUSTOMER SERVICE & ORDER PROCESSING

The position of Independent Contractor encompasses the performance of inbound customer services & order processing consists of interacting with customers to provide information in response to inquiries about products and services, analyzing customer problems, and handling and resolving complaints.

Tasks may include

- Alerting technical support in Canada when there is an absence of information in the Knowledge Base;
- Assisting and training less experienced affiliates, as necessary;
- Developing and maintaining a knowledge of all services and equipment offered by Banners Broker International.

- Establishing and maintaining effective relationships with affiliates by gaining their trust and respect;
- Explaining service contract provisions to dissatisfied affiliates;
- Keeping current with program information, trends and developments;
- Keeping records of affiliate interactions;
- Obtaining details of complaints and account cancellations;
- Offering alternative solutions with the objective of retaining affiliates business;
- Utilizing a variety of systems and web-based tools to research & resolve affiliate issues.

B. SALES AND SALES SUPPORT

Sales and Sales Support consists of directing the actual distribution or movement of a product or service to the affiliate. It also consists of establishing training programs for affiliates, and analyzing sales statistics gathered by staff to determine sales potential and inventory requirements and monitor the preferences of affiliates.

Tasks

- Confer or consult with the company to plan advertising services and to secure information on equipment and affiliate specifications;
- Confer with potential affiliate regarding equipment needs and advise affiliates on types of equipment to purchase;
- Direct and coordinate activities involving sales of products, services;
- Monitor customer preferences to determine focus of sales efforts;
- Oversee regional and local Affiliate Members, and their respective staffs;
- Plan and direct staffing, training, and performance evaluations to develop and control service programs;
- Resolve affiliate complaints regarding service;
- Review operational records and reports to project sales and determine profitability;
- Act as liaison between Affiliate Members in his/her/its country as herein described
- Conduct private and public presentations of the Banners Broker Business concept.
- Offer training, support and expertise to existing and future Affiliate Members participating in the Banners Broker program.

Independent Contractor agrees to devote as much time, attention, and energy as necessary to complete or achieve the following: It is expected that the Scope of Work outlined above will be completed within a timely manner in a professional and business-like manner.

- a. Independent Contractor shall additionally perform any and all tasks and duties associated with the Scope of Work set forth above, including but not limited to, work being performed already or related change orders. Independent Contractor shall not be entitled to engage in any activities which are not expressly set forth by this Agreement without the express written permission of Banners Broker International.
- b. The books and records related to the Scope of Work set forth in this Agreement shall be maintained by the Independent Contractor at the Independent Contractor's principal place of business and open to inspection by Company during regular working hours. Documents to which Company will be entitled to inspect include, but are not limited to, any and all contract

documents, change orders/purchase orders and work authorized by Independent Contractor or Company on existing or potential projects related to this Agreement.

- c. Independent Contractor shall be responsible to the management and directors of Company, but Independent Contractor will not be required to follow or establish a regular or daily work schedule
- d. Independent Contractor shall supply all necessary employees, equipment, materials and supplies and will not rely on the equipment or offices of Company for completion of tasks and duties set forth pursuant to this Agreement. Any advice given Independent Contractors regarding the scope of work shall be considered a suggestion only, not an instruction. Company retains the right to inspect, stop, or alter the work of Independent Contractor to assure its conformity with this Agreement.
- e. Independent Contractor shall operate his/her/its Independent Contractor business from a bona fide commercial/office location not from his/her/its residence or any residential setting. Hours of operation shall be consistent with normal business hours of a normal business operation during which time first tier support employees shall be available and telephone and computer connections and services will be available. It is the responsibility of the Independent Contractor to provide upon request of Banners Broker International evidence including photographs, a copy of the lease agreement and/or proof of ownership of the business premises

4. ASSURANCE OF SERVICES

- a. Independent Contractors are not to have any connection with account managers or take any part in managed accounts.
- b. Persons directly related to the Independent contractors are not allowed to have connections with account managers or take part in managed accounts. For example: kids, siblings, spouses, parents, cousins etc.

5. COMPENSATION

- a. Independent Contractor shall be entitled to compensation for performing those tasks and duties related to the Scope of Work as follows:

[SALES AND SUPPORT]

- Conduct a minimum of 1 weekly webinar coordinated with the Office of the Chief Operating Officer of Banners Broker International.
- Conduct weekly Information Sessions promoting Banners Broker International.
- Have a sales phone line that is operational a minimum of 8 hours a day

[AFFILIATE CUSTOMER SERVICE]

Shall provide Customer Support Service on all aspects of the Banners Broker program, including but not limited to:

- o Advertising Support
- o Back Office navigation support,
- o Panel support
- o Package support
- o Traffic pack support
- o Traffic booster support
- o Promotion support

b. Such compensation shall become due and payable to Independent Contractor in the following time and manner listed below.

- 5% of sales total volume for area specified
- 7% of sales total volume for area specified once sales volume reaches \$100k per month
- 8% of sales total volume for area specified once sales volume reaches \$100k for two consecutive months
- 9% of sales total volume for area specified once sales volume reaches \$100k for three consecutive months
- 10% of sales total volume for area specified once sales volume reaches \$100k for three consecutive months

6. NOTICE CONCERNING WITHHOLDING OF TAXES

Independent Contractor recognizes and understands that it will receive an Income statement and related tax statements outlining the amount he/she/it has been paid, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal/Provincial/County and/or State laws of the country of BANGLADESH. Independent Contractor hereby promises and agrees to indemnify the Company for any damages or expenses, including attorney's fees, and legal expenses, incurred by the Company as a result of independent contractor's failure to make such required payments.

7. AGREEMENT TO WAIVE RIGHTS TO BENEFITS

- a. Independent Contractor hereby waives and foregoes the right to receive any benefits given by Company to its regular employees, including, but not limited to, health benefits, vacation and sick leave benefits, profit sharing plans, etc. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the Independent Contractor by virtue of their services to Company, and is effective for the entire duration of Independent Contractor's agreement with Company. This waiver is effective independently of Independent Contractor's employment status as adjudged for taxation purposes or for any other purpose.
- b. Neither this Agreement, nor any duties or obligations under this Agreement may be assigned by either party without the consent of the other.

8. TERMINATION

This Agreement may be terminated by the Independent Contractor prior to the completion or achievement of the Scope of Work by giving NINETY (90) days written notice. Such termination shall not prejudice any

other remedy to which the Independent Contractor may be entitled, either by law, in equity, or under this Agreement.

9. NON-DISCLOSURE OF TRADE SECRETS, CUSTOMER LISTS AND OTHER PROPRIETARY INFORMATION

- a. Independent Contractor agrees not to disclose or communicate, in any manner, either during or after Independent Contractor's agreement with Company, information about Company, its operations, clientele, or any other information, that relate to the business of Company including, but not limited to, the names of its customers, its marketing strategies, operations, or any other information of any kind which would be deemed confidential, a trade secret, a customer list, or other form of proprietary information of Company. Independent Contractor acknowledges that the above information is material and confidential and that it affects the profitability of Company.
- b. Independent Contractor understands that any breach of this provision, or that of any other Confidentiality and Non-Disclosure Agreement, is a material breach of this Agreement. To the extent Independent Contractor feels they need to disclose confidential information, they may do so only after obtaining written authorization from AN OFFICER of the Company.

10. NON-SOLICITATION

Independent Contractors shall not, during the Agreement and for a period of one year immediately following termination of this Agreement, either directly or indirectly, call on, solicit, or take away, or attempt to call on, solicit, or take away, any of the customers or clients of the Company on whom Independent Contractor called or became acquainted with during the terms of this Agreement, either for their own benefit, or for the benefit of any other person, firm, corporation or organization.

11. NON-RECRUIT

Independent Contractor shall not, during this Agreement and for a period of one year immediately following termination of this agreement, either directly or indirectly, recruit any of Company's employees for the purpose of any outside business.

12. NON-COMPETITION

For a period of Twelve (12) Months following termination of this Agreement, the Contractor shall not, directly or indirectly, through services to any partnership of which Contractor is a partner or employee or through any corporation or other entity in which Contractor has any interest or by whom is employed, compete with the Company or any of its affiliates or subsidiaries in [COUNTRY(IES) of _____] in any activity in which the Company or its affiliates or subsidiaries may have been engaged within One (1) year prior to the termination of this Agreement.

13. RETURN OF PROPERTY

On termination of this Agreement, or whenever requested by the parties, each party shall immediately deliver to the other party all property in its possession, or under its care and control, belonging to the other party to them, including but not limited to, proprietary information, customer lists, trade secrets, intellectual property, computers, equipment, tools, documents, plans, recordings, software, and all related records or accounting ledgers.

14. EXPENSE ACCOUNTS

Independent Contractor and the Company agree to maintain separate accounts in regards to all expenses related to performing the Scope of Work. Independent Contractor is solely responsible for payment of expenses incurred pursuant to this Agreement unless provided otherwise in writing by AN OFFICER of the company. Independent Contractor agrees to execute and deliver any agreements and documents prepared by Company and to do all other lawful acts required to establish document and protect such rights.

15. WORKS FOR HIRE

Independent Contractor agrees that the Scope of Work, all tasks, duties, results, inventions and intellectual property developed or performed pursuant to this Agreement are considered "works for hire" and that the results of said work is by virtue of this Agreement assigned to the Company and shall be the sole property of Company for all purposes, including, but not limited to, copyright, trademark, service mark, patent, and trade secret laws.

16. LEGAL COMPLIANCE

Independent Contractor is encouraged to treat all company employees, customers, clients, business partners and other affiliates with respect and responsibility. Independent Contractor is required to comply with all laws, ethical codes and company policies, procedures, rules or regulations, including those forbidding sex harassment, discrimination, and unfair business practices.

17. LICENSING, WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE

Independent Contractor agrees to immediately supply the Company with proof of any licensing status required to perform the Scope of Work pursuant to this Agreement, Workers' Compensation Coverage where required by law and General Liability Insurance (including malpractice insurance, if warranted), upon request of the Company.

18. PERSONS HIRED BY INDEPENDENT CONTRACTOR

All persons hired by Independent Contractor to assist in performing the tasks and duties necessary to complete the Scope of Work shall be the employees of Independent Contractor unless specifically indicated otherwise in an agreement signed by all parties. Independent Contractor shall immediately provide proof of Workers' Compensation Insurance and General Liability Insurance covering said employees, upon request of the Company.

19. NOTICES

Any notice to be given hereunder by any party to the other may be affected either by personal delivery in writing, or by mail, registered or certified, postage pre-paid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraphs of this Agreement, but each party may change their address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of five (5) days after mailing. Independent Contractor agrees to keep Company current as to their business and mailing addresses, as well as telephone, facsimile, email and pager numbers.

20. ATTORNEY'S FEES AND COSTS

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements incurred both before or after judgment in addition to any other relief to which such party may be entitled.

21. MEDIATION AND ARBITRATION

Any controversy between the parties to this Agreement involving the construction or application of any of the terms, provisions, or conditions of this Agreement, shall on written request of either party served on the other, be submitted first to mediation and then if still unresolved to binding arbitration. Said mediation or binding arbitration shall comply with and be governed by the provisions of the [LAWS] unless the Parties stipulate otherwise. The parties shall each appoint one person to hear and determine the dispute and, if they are unable to agree, then the two persons so chosen shall select a third impartial arbitrator whose decision shall be final and conclusive upon both parties. The attorneys' fees and costs of arbitration shall be borne by the losing party, as set forth in paragraph 18, unless the Parties stipulate otherwise, or in such proportions as the arbitrator shall decide.

22. REPRESENTATION

Each party of this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party hereto, or anyone acting on behalf of any party hereto, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed and dated by all parties hereto.

23. INDEMNIFICATION

Independent Contractor shall defend, indemnify, hold harmless, and insure Company from any and all damages expenses or liability resulting from or arising out of, any negligence or misconduct on Independent Contractor's part, or from any breach or default of this Agreement which is caused or occasioned by the acts of Independent Contractor. Independent Contractors shall insure that its employees and affiliates take all actions necessary to comply with the terms and conditions set forth in this Agreement. Independent Contractor shall name Company as an additional insured on all related insurance policies including workers compensation, and general liability.

24. CONTAINMENT OF ENTIRE AGREEMENT

This Agreement is an independent document and supersedes any and all other Agreements, either oral or in writing, between the parties hereto, except any Confidentiality, Trade Secret, Non-Compete, Non-Disclosure, Indemnification or Arbitration Agreement. This Agreement contains all of the covenants and Agreements between the parties, except for those set forth in any Confidentiality, Trade Secret, Non-Compete, Non-Disclosure, or Arbitration Agreement.

25. PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way. This Agreement shall not be terminated by the merger or consolidation of the Company into or with any other entity.

26. 90 DAY CLAUSE

All agreements are subject to a 90 day trial period. This means that Banners Broker reserves the right to terminate this agreement in the first 90 days due to failure to fully offer exceptional support and sales services to our Affiliate Customers in your territory. Banners Broker will inform you of complaints and issues to improve on during this period, failure to do will result in this contract being terminated after 90 days.

Otherwise this agreement is good for 1 year from the date of signing.

27. GOVERNING LAW

This Agreement shall be governed by, and construed under, the laws of the ISLE OF MANN in the Country of THE UNITED KINGDOM.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BANNERS BROKER INTERNATIONAL

INDEPENDENT CONTRACTOR

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

Tab 16

This is Exhibit "16" referred to in the Affidavit of Paul Robert
Appleton sworn August6....., 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

For court use only

Claim No. *ORD 13/0035*Issue date *24 October 2013***IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN****CIVIL DIVISION****ORDINARY****PROCEDURE****Parties**

IAN DRISCOLL
19 BAR HOUSE LANE
UTLEY
KEIGHLEY
WEST YORKSHIRE
BD20 6HA

Claimant(s)
(Full name(s) &
address(es))

BANNERS BROKER INTERNATIONAL LIMITED
c/o OCRA (ISLE OF MAN) LIMITED
GROSVENOR COURT
TOWER STREET
RAMSEY
ISLE OF MAN
IM8 1JA

Defendant(s)
(Full name(s) &
address(es))

Brief details of claim
(use numbered paragraphs)

[1] This is a claim for breach of contract and/or breach of trust and/or unjust enrichment.

[2] The value of the Claim is indicated below. However, the Claimant additionally seeks certain disclosure, as a result of which (if obtained) the value of the Claim is likely to increase.

Value of claim (excluding interest, fees & costs) £ (Not less than) 2,007,601.66

Name and address (including postcode) of defendant on whom copy of the claim form is to be served BANNERS BROKER INTERNATIONAL LIMITED per Christopher Smith 250 Jarvis Street, Suite 503 Toronto Ontario Canada M5B 2L2	£	
	Amount claimed	(Not less than) £2,007,601.66
	Court fee	£2,500.00
	Coroner's fee	£12.50
	Advocate's costs	£1,800.00
	Total amount	(Not less than) £2,011,914.16

Particulars of claim(attached ☐) (to follow ☒)
 (use numbered paragraphs)

[I] PARTIES

[1] The Claimant is Ian Driscoll of 19 Bar House Lane, Utley, Keighley, West Yorkshire, BD20 6HA. Mr Driscoll is a specialist in online marketing and advertising.

[2] The Defendant, Banners Broker International Limited ("BBI"), is an online advertising company. It is incorporated and registered in the Isle of Man (company number 124375C). The Isle of Man Companies Registry records the Defendant's address as: Kissack Court, 29 Parliament Street, Ramsey, Isle of Man, IM8 1AT.

[3] This Claim Form will be served on a director of the Claimant, Christopher Smith (of 250 Jarvis Street, Suite 503, Toronto, Ontario, Canada, M5B 2L2), pursuant to an Order dated 10th September 2013. An attempt was made to serve the Claim Form (as issued on 22nd July 2013) on OCRA (Isle of Man) Limited ("OCRA"), per OCRA's Advocates Callin Wild. The background to this was as follows. On 16th January 2013, OCRA had filed Form 335a at the Isle of Man Companies Registry ("STATEMENT THAT THE COMPANY DOES NOT HAVE AUTHORITY TO MAINTAIN ITS REGISTERED OFFICE AT SPECIFIED PREMISES"). Such form recited (inter alia) that the Defendant purported to have its registered office at Kissack Court, 29 Parliament Street, Ramsey, Isle of Man, IM8 1AT; and that the Defendant did not have authority to maintain its registered office at such premises. It appeared appropriate to the Claimant, in such circumstances, to serve the Claim on the Defendant c/o OCRA (per

OCRA's Advocates Callin Wild).

[II] PRE-CLAIM CORRESPONDENCE & FILINGS

[4] Mr Driscoll's advocates wrote to OCRA's advocates, by letter dated 9th May 2013, to put them on notice that a letter before claim would be sent within 7 days. Such letter followed a telephone conversation, also on 9th May 2013, between Advocates Coren of Old Court Chambers and Goldie of Callin Wild, in which Mr Coren gave notice that a letter before claim would follow, and that the value of such claim would not be less than \$3,000,000. Such letter before claim was ultimately sent on 12th June 2013 (in the meantime, a further update letter was sent to Callin Wild, on 16th May 2013, indicating that it was hoped that the letter before claim would be with OCRA's advocates very shortly).

[5] The next event was that, on 21st May 2013, Richard Maurice Dixon and Stephen Mark Eppleston resigned as Directors of BBI; and that, also on such date, Laxey Corporate Services Limited resigned as Secretary of the Defendant. The relevant Form 9N was filed at the Isle of Man Companies Registry on 31st May 2013.

[6] A detailed letter before claim dated 12th June 2013 ("the Letter Before Claim") was sent on such date by e-mail and post, on behalf of the Claimant, to the Defendant c/o OCRA, per OCRA's Advocates. Such Letter Before Claim quantified the intended Claim's "presently quantifiable loss" as US\$3,030,106.10 (ie. £2,007,601.66, at the exchange rate pertaining on 15th July 2013). Such sum was stated to exclude additional unquantifiable loss, which could only be quantifiable following certain disclosure requested in such Letter Before Claim. A 14-day deadline (ie. to 26th June 2013) was afforded to the Defendant:-

(a) to pay, to the Claimant, the above "presently quantifiable loss" (plus interest at 4% p.a, plus costs to be assessed); and

(b) to disclose, to the Claimant, various additional financial information enabling quantification of additional losses.

[7] By letter to Callin Wild dated 19th June 2013, the Claimant's advocates additionally sought confirmation that assets sufficient to satisfy the Claimant's Claim would be retained in the Isle of Man, until such Claim was finally resolved.

[8] By e-mail dated 25th June 2013, OCRA's advocates indicated to the Claimant's advocates that OCRA planned to seek direction from the Court, prior to taking any action on this matter; that notice of any application would be given; that work on the procedure for such application was being undertaken; and that it was hoped to be in a position to file such application the week beginning 1st July 2013. To date, the Claimant's advocates have received no such further notice.

[9] In the above e-mail, OCRA's advocates also confirmed (in response to the above query in the letter from Old Court Chambers dated 19th June 2013) that the Defendant had no directors; "and on that basis is in no position to take any action regarding transfer of funds".

[III] BASIS OF LIABILITY

(a) Breach of Contract

[10] Appended at [Tab 1] are 'Terms and Conditions of Banners Broker United Kingdom' (as downloaded by the Claimant on 26th May 2012). These may be described as an "Indicative Affiliate Agreement", being indicative of the Claimant's actual written agreement, with the Defendant, to act as an 'Affiliate' of the Defendant ("the Affiliate Agreement"). The Claimant entered into the (actual) Affiliate Agreement, on or around 4th March 2011, governing the Claimant's work as an Affiliate of the Defendant. A copy of the actual agreement signed by the Claimant is not presently available to the Claimant.

[11] Under "Licence and Membership" (on p. 1 of the Indicative Affiliate Agreement), Clause 2 indicates that the Claimant is: "... contracting with the company for the purchase of its products and for the recruitment of new affiliates under the compensation plan". Clause 2 indicates that the Claimant has: "the right... to... 3. if qualified, earn bonuses... pursuant to the applicable the [sic] Company's compensation plan... and other rewards under the Compensation Plan, that will be awarded on the same basis as it allows to its Affiliates generally in respect of legitimate sales of the Company's products, and not in respect of the mere introduction of new Affiliates to the Company." Under "Payment Conditions" (on p. 1), Clause 1 indicates: "All liquidation requests shall be honoured within a ten day period to the payment account noted in your back office".

[12] Appended at [Tab 2] is an Independent Contractor Agreement ("ICA"), also entered into by the parties. The ICA is stated, in Clause 1, to be effective commencing 1st June 2012. The Claimant signed the ICA, and returned the signed document to the Defendant, in approximately early August 2012.

[13] The ICA constitutes a written agreement setting out various separate and additional undertakings by the Claimant (as "Independent Contractor"), on the one hand, and the Defendant, on the other, in relation to the provision of various online marketing and advertising services, to be undertaken by the Claimant, as defined within the ICA.

[14] Clause 3 of the ICA (headed "TASKS, DUTIES, AND SCOPE OF WORK") sets out the nature of services to be undertaken by the Claimant, under the ICA.

[15] Clause 3 A (headed "CUSTOMER SERVICE & ORDER PROCESSING") commences:-

"The position of Independent Contractor encompasses the performance of inbound customer services & order processing consists of interacting with customers to provide

information in response to inquiries about products and services, analyzing customer problems, and handling and resolving complaints."

(An indicative series of tasks is then set out).

[16] Clause 3 B of the ICA (headed "SALES AND SALES SUPPORT") commences:-

"Sales and Sales Support consists of directing the actual distribution or movement of a product or service to the affiliate. It also consists of establishing training programs for affiliates, and analyzing sales statistics gathered by staff to determine sales potential and inventory requirements and monitor the preferences of affiliates".

(An indicative series of tasks is then set out).

[17] Clause 15 of the ICA indicates (inter alia) that:-

"... It is expected that the Scope of Work outlined above will [sic] completed within a timely manner in a professional and business-like manner".

[18] Under Clause 5 a. of the ICA, the Claimant, as independent contractor, is "entitled to compensation for performing those tasks and duties related to the Scope of Work [see paragraphs [12] to [14], above], as follows":-

"[SALES AND SUPPORT]

- Conduct a minimum of 1 weekly webinar coordinated with the Office of the [CEO] of [BBI].
- Conduct weekly Information Sessions promoting [BBI].
- Have a sales phone line that is operational a minimum of 8 hours a day

Shall provide Customer Support Service on all aspects of the Banners Broker program, including but not limited to:

- Advertising Support
- Back Office navigation support,
- Panel support [see paragraph [32], [Note 4], below]
- Package support
- Traffic pack support

- Traffic booster support
- Promotion support."

[19] Clause 5 b. of the ICA goes on to set out a sliding scale of percentage-based payments to the Claimant, as independent contractor:-

"Such compensation shall become due and payable to [the Claimant] in the following time and manner listed below.

- 5% of sales total volume for area specified
- 7% of sales total volume for area specified once sales volume reaches \$100k per month
- 8% of sales total volume for area specified once sales volume reaches \$100k for two consecutive months
- 9% of sales total volume for area specified once sales volume reaches \$100k for three consecutive months
- 10% of sales total volume for area specified once sales volume reaches \$100k for three consecutive months [sic]".

[20] Clause 27 of the ICA contains a governing law clause, indicating that the ICA:-

"... shall be governed by, and construed under, the laws of the ISLE OF MANN in the Country of THE UNITED KINGDOM [sic]".

[21] The Claimant proceeded to perform his contractual duties, in good faith, in accordance with the Affiliate Agreement, from on or around 4th March 2011 to on or around 15th January 2013.

[22] Similarly, after signing and returning a copy of the ICA to the Defendant, the Claimant proceeded to perform his duties, in good faith, in accordance with Clause 5 a. of the ICA, in particular, and in accordance with the ICA generally, up to around 15th January 2013, when the ICA was repudiated by the Defendant.

[23] However, on 16th December 2012, by e-mail from David Hooker, International Business Development / International Compliance Officer, the Defendant purported unilaterally to terminate the ICA.

[24] Mr Hooker's e-mail states (Inter alia):-

"After having reviewed the issue of your non-compliance within the terms of your IC agreement, it has been established that you have been approaching other ICs as well as

affiliates with another business opportunity that could affect the future of Banners Broker not only in the UK but worldwide.

'We have received numerous complaints from ICs as well as written confirmed documentation leaving us with no choice other than to revoke your IC agreement and status with immediate effect.'

[25] Such purported termination by the Defendant of the ICA - and the accompanied by an initial 'locking' of the Claimant's Affiliate account with the Defendant, the same day - was unjustified, there being no such non-compliance by the Claimant, as alleged by Mr Hooker, or at all; and, in effect, also repudiated: (1) the Affiliate Agreement and/or (2) the ICA.

[26] Following further correspondence between the parties over the Christmas 2012 period, the Defendant issued the Claimant with a "Policy and Procedure Violation", on 15th January 2013, stating (inter alia):-

"... you are in contravention of the Policies and Procedures as laid out and described on the website www.Bannersbroker.com.

'The particular contravention is "Cross Sponsoring", bringing our company into disrepute and misrepresentation, thereby damaging our reputation, and potentially affecting our continued growth and profitability.'

[27] Such notice, to the Claimant, was accompanied by a re-'locking' of the Claimant's Affiliate account with the Defendant (which account had initially been locked on 16th December 2012), on or around 15th January 2013, making it impossible for the Claimant to access monies earned by the Claimant as an Affiliate, and held by the Defendant, to which the Claimant was immediately entitled.

[28] Such above allegation of impermissible 'cross-sponsoring' is emphatically denied by the Claimant; and was also denied by him, in correspondence between the parties, from 16th January 2013 onwards.

[29] There is, therefore, no justified basis upon which the Defendant could legitimately withhold, from the Claimant, the monies claimed by him, and due to him (as particularised below), in respect of: (1) the Affiliate Agreement, or (2) the ICA.

[30] Alternatively, there was a course of conduct between the parties, in turn reflecting the terms of the Affiliate Agreement and/or the ICA, which course of conduct gave rise to binding contractual obligations upon the parties; which obligations the Defendant has breached, as particularised herein.

(b) Breach of trust

[31] Alternatively, the Defendant now:-

[31.1] holds, as constructive trustee for the Claimant, a sum equivalent to the Claimant's "presently quantifiable loss" (as defined below), plus his "presently unquantifiable loss" (as defined below); and

[31.2] is liable to account to the Claimant for the same;

[31.3] has acted in breach of such trust, by failing, to date, to forward a sum equivalent to such losses to the Claimant.

(c) Unjust enrichment

[32] Alternatively, the Defendant has been unjustly enriched, at the Claimant's expense, to the extent of the "presently quantifiable loss", plus his "presently unquantifiable loss" (as defined below).

[IV] SUMMARY OF "PRESENTLY QUANTIFIABLE LOSS"

[33] The Claimant's presently quantifiable loss (as at 16th December 2012) comprises:-

(a) Under the Affiliate Agreement

(1)	Sum in "e-Wallet" [see Note 1, below]	\$609,926.10
(2)	Payment requests made prior to locking of account (unpaid) [Note 2]	\$260,000
(3)	'Traffic' value [Note 3]	\$1,440,000
(4)	'Panel' value [Note 4]	\$360,090
(5)	Replacement panel [Note 5]	\$360,090

TOTAL: \$3,030,106.10

(such sum being expressed in US \$ to reflect the parties' practice; and the prevailing exchange rate as at 15th July 2013 valuing such sum at £2,007,01.66)

("presently quantifiable loss")

[34] In relation to the above Summary:-

[Note 1]: This sum denotes cash available for the Claimant to withdraw, from the Defendant, as at the date of purported termination (16th December 2012): see 'screenshots' at [Tab 3], attached.

[Note 2]: Prior to the initial 'locking' of the Claimant's account with the Defendant, on 16th December 2012, the Claimant had requested \$250,000 to Solid Trust Pay; and \$10,000 to the Pre Pay Card; as each sum was requested prior to the Claimant's account being 'locked', such sums are now due and payable (notwithstanding that they are not displayed on the "e-Wallet").

[Note 3]: 'Traffic' being a monetary reward for others joining the Defendant (ie. after the Claimant); and 'traffic value' being the monetary value of traffic to qualify 'panels' (see below).

[Note 4]: 'Panels' represent advertising space: 'panel' values are \$360,090 (as can be seen as 'qualified' in the "Account Summary" in the enclosed "e-Wallet" at [Tab 3]).

[Note 5]: As a panel 'caps', it is replaced with another panel (meaning that a further \$360,090 becomes due).

[35] Attached at [Tab 3] are 'screen-shots' of the Claimant's Affiliate account with the Defendant, as at 16th December 2012. Such indicate the sum "Available [ie. for the Claimant] to Withdraw" as being \$609,926.10, as of such date - in turn representing part of the "presently quantifiable loss" now claimed by the Claimant.

(b) Under the ICA

[36] The Claimant further claims all sums properly due to the Claimant under Clause 5 b. of the ICA (and not yet paid to the Claimant), in respect of the period from 1st June 2012 to 15th January 2013. Such claim includes a claim for all sums in excess of the arbitrary US \$100,000 monthly 'cap' introduced by the Defendant (such cap not having been agreed by the Claimant). The Claimant refers to such loss as his "presently unquantifiable loss".

[37] The Claimant also claims interest on the above "presently quantifiable loss", and on the "presently unquantifiable loss", at 4% p.a.

[V] REQUEST FOR DISCLOSURE

[38] Further, the Claimant reasonably considers that the value of his BBI Affiliate account,

when re-'locked' on or around 15th January 2013, will have been significantly higher than the "presently quantifiable loss" (as particularised above).

[39] The Claimant therefore seeks disclosure of the value of his BBI account, when re-'locked' on or around 15th January 2013, in order that he may:-

[39.1] quantify his total overall loss (in respect of his work as an Affiliate); and

[39.2] claim from the Defendant the additional loss (ie. over and above the "presently quantifiable loss").

[40] The Claimant additionally seeks disclosure of the Defendant's total sales volume for the period between 1st June 2012 and 15th January 2013, in order that he may quantify his "presently unquantifiable loss" (in respect of his work as an Independent Contractor).

[VI] RELIEF SOUGHT

[41] The Claimant therefore seeks the following relief:-

[41.1] payment of the "presently quantifiable loss", plus interest at 4% p.a, plus costs (to be assessed);

[41.2] disclosure of the value of the Claimant's BBI Affiliate account, when re-'locked' on or around 15th January 2013 (and payment of the same, to the extent that such exceeds the "presently quantifiable" loss);

[41.3] payment of the "presently unquantifiable loss", in respect of the Claimant's work as an Independent Contractor (as particularised above), plus interest at 4% p.a, plus costs (to be assessed); and

[41.4] disclosure of the Defendant's total sales volume for the period between 1st June 2012 and 15th January 2013 (in order to quantify the "presently unquantifiable loss").

If you need to continue on a separate sheet please use the prescribed form – 'HCC-CONTINUATION SHEET'

Statement of truth

[I believe ☐] [The claimant believes ☒] that the facts stated in this claim form are true.
[I am duly authorised by the claimant to sign this statement]

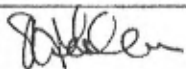
Full name of [claimant ☒

*Indicate as appropriate

Name of claimant's advocate's firm

OLD COURT CHAMBERS

Signed



[Claimant ☒

Position or office held (if signed on behalf of a company or other corporation)
(For 'Small Claims Procedure' only)

ADVOCATE

Date 23.10.13

(amending Claim Form issued 22.07.13)

<p>Claimant's or claimant's advocate's address in the Isle of Man (including postcode) to which documents or payments should be sent:</p> <p>OLD COURT CHAMBERS EIGHT FINCH ROAD DOUGLAS ISLE OF MAN IM1 2PT</p>	<p>Telephone no.</p> <p>641580</p>
	<p>Fax no. (if appropriate)</p> <p>641581</p>
	<p>E-mail (if appropriate)</p> <p>steven.coren@oldcourtchambers.im mel.christian@oldcourtchambers.im</p>
	<p>Reference (if any)</p> <p>13-OCC-078</p>

Tab 17

This is Exhibit "17" referred to in the Affidavit of Paul Robert
Appleton sworn August⁶..., 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

ORD 13/0035

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION
ORDINARY PROCEDURE**

Between:-

IAN DRISCOLL

Claimant

and

BANNERS BROKER INTERNATIONAL LIMITED

Defendant

and

IN THE MATTER of the Claimant's Application Notice of 12th August 2013

**At a Court held at Douglas
on the 10th day of September 2013**

**HIS HONOUR THE DEEMSTER DOYLE
FIRST DEEMSTER AND CLERK OF THE ROLLS**

UPON the above styled without-notice Application Notice being called today in the presence of Counsel for the Claimant **IT IS ORDERED** that:-

1. The Claimant has leave to serve the Claim Form upon the Defendant by sending a copy of the Claim Form, and a copy of this Order, by post, to Christopher Smith of 250 Jarvis Street, Suite 503, Toronto, Ontario, Canada M5B 2L2, Mr Smith being shown as a director of the Defendant in the documents kept by the Department of Economic Development ("the Department").
2. The Claimant shall, within 7 days, file a Witness Statement exhibiting the Form 9N dated 22nd August 2013 filed with the Department by Mr Smith.
3. Costs reserved.



SEAL OF THE HIGH COURT

Tab 18

This is Exhibit "18" referred to in the Affidavit of Paul Robert
Appleton sworn August ...6....., 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

Form HC2B

ACKNOWLEDGMENT OF SERVICE (general)

Page 1

Claim No.

ORD 13/0035

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CIVIL DIVISION

ORDINARY

PROCEDURE

Parties

IAN DRISCOLL

Claimant(s)

BANNERS BROKER INTERNATIONAL LIMITED

Defendant(s)

Please enter the full name of the defendant if (a) there is more than one defendant or (b) it is different from the name given on the claim form.

Enter an 'X' in the appropriate box below

- ☒ I intend to defend all of this claim
☐ I intend to defend part of this claim
☐ I intend to dispute the court's jurisdiction

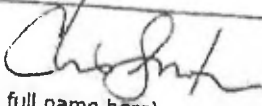
If the defendant is an individual, give date of birth (or over 18) here

- If you do not file and serve an admission or defence within 14 days after the particulars of claim were served on you (either with the claim form or separately), you should take or send this form in duplicate so as to reach the Courts Office within 14 days of the particulars of claim being served on you, at the Courts Office, Isle of Man Courts of Justice, Deemsters Walk, Bucks Road, Douglas Isle of Man, IM1 3AR. If you fail to do so, judgment may be entered against you.
- If you file an acknowledgment of service but do not file and serve a defence within 28 days of the date of service of the claim form, or particulars of claim if served separately, judgment may be entered against you.
- If you dispute the jurisdiction but do not file an application to dispute the courts jurisdiction within 14 days of the date of filing this acknowledgment of service, it will be assumed that you accept the court's jurisdiction.

Form HC2B

ACKNOWLEDGMENT OF SERVICE (general)

Page 2

Signed  (type or print full name here) CHRISTOPHER SMITH [Defendant <input checked="" type="checkbox"/>] [s advocate <input type="checkbox"/>] [Litigation friend <input type="checkbox"/>	
Position or office held (if signed on behalf of a company or other corporation): BENEFICIARY	
Date DEC 16, 2013	
Defendant or defendant's advocate's address in the Isle of Man (including postcode) to which documents should be sent:	Telephone no. 1-416-818-8314
	Fax no. (if appropriate)
	E-mail (if appropriate) csmith@bannersbroker.com
	Reference (if any)

Tab 19

This is Exhibit "19" referred to in the Affidavit of Paul Robert
Appleton sworn August ...6....., 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND

ORD 13/0035

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION
ORDINARY PROCEDURE**

BETWEEN:**IAN DRISCOLL**

and

Claimant

BANNERS BROKER INTERNATIONAL LIMITED

and

Defendant

IN THE MATTER of the Application of Targus Investments Limited
dated 20th January 2014

At a Court held on
the 10th day of February 2014

**HIS HONOUR THE DEEMSTER DOYLE
FIRST DEEMSTER AND CLERK OF THE ROLLS**

Upon the above matter being called by the said Application this day in the presence of Counsel for the Claimant and in the presence of Counsel for Targus Investments Limited ("Targus") And having considered the Application of Targus And in particular the evidence relied on therein including a Claim filed by Targus for the winding up of Banners Broker International Limited And having considered section 166 of the Companies Act 1931 **IT IS ORDERED** that:

1. The Claim under serial number ORD 13/0035 be and is hereby stayed pending determination of proceedings with serial number CHP 14/0008 or until further order of this Court.
2. Targus do file and serve written submissions in respect of costs of and incidental to Targus' Application together with an agreed paginated bundle of correspondence by 4pm on Monday 17th February 2014;
3. The Claimant do file and serve written submissions in respect of costs by 4pm on Monday 24th February 2014;
4. The above issue of costs shall be determined administratively; and
5. The Claimant do within 7 days file and serve a witness statement exhibiting the e-mail and attached letter sent by Old Court Chambers to the Court Office on 10th February 2014 at 12.16.



SEAL OF THE HIGH COURT

Tab 20

This is Exhibit "20" referred to in the Affidavit of Paul Robert
Appleton sworn August 6, 2014



Notary Public in England and Wales

Manish Kumar Soni

Notary / Notary Public
M K Soni Notaries LLP
50 Broadway, London
SW1H 0DB, ENGLAND



Isle of Man

Ellan Vannin

AT 2 of 1931

COMPANIES ACT 1931

- (2) Regulations under subsection (1) shall not come into operation unless they are approved by Tynwald.²⁴⁹

PART V – WINDING UP

(I) PRELIMINARY

Modes of Winding Up

155 Modes of winding up

- (1) The winding up of a company may be either —
- (a) by the court; or
 - (b) voluntary; or
 - (c) subject to the supervision of the court.
- (2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories

156 Liability as contributories of present and past members

- (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) of this section and the following qualifications —
- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
 - (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
 - (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
 - (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

- (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
 - (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
 - (g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.
- (2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:
- Provided that —
- (a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
 - (b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
 - (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.
- (3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

157 Definition of contributory

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

158 Nature of liability of contributory

The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

159 Contributories in case of death of member

- (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.
- (2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereout of the money due.

160 Contributories in case of bankruptcy of member

If a contributory becomes bankrupt either before or after he has been placed on the list of contributories —

- (1) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be a contributory accordingly, 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 money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

161 Provision as to married women

- (1) The husband of a female contributory married before the date of the commencement of the *Married Women's Property, Dower and Widowright Act 1921*, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

- (2) Subject as aforesaid, nothing in this Act shall affect the provisions of the *Married Women's Property, Dower and Widowright Act 1921*.

(II) WINDING UP BY THE COURT

Cases in which Company may be wound up by court

162 Circumstances in which company may be wound up by court

A company may be wound up by the court if —

- (1) the company has by special resolution resolved that the company be wound up by the court;
- (2) being a public company which was registered as such on its original incorporation, has not complied with the conditions for the commencement of business required by subsection (1)(a) and (b) of section 95 of this Act or, as the case may be, subsection (2)(b) of that section;²⁵⁰
- (3) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (4) except in the case of a private company limited by shares or by guarantee, the number of members is reduced below two;²⁵¹
- (5) the company is unable to pay its debts;
- (6) the court is of opinion that it is just and equitable that the company should be wound up.

163 Definition of inability to pay debts

(1) A company shall be deemed to be unable to pay its debts —

- (1) 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, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (2) if execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (3) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

- (2) The Treasury may by order increase the sum referred to in paragraph (1) of subsection (1) above.²⁵²
- (3) An order made under subsection (2) above shall not come into operation until it has been approved by Tynwald.²⁵³

Petition for Winding Up and Effects thereof

164 Provisions as to applications for winding up

[P1967/81/35(1)]

- (1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by the Treasury, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by 10 or more policyholders in the case of an insurance company, or by all or any of those parties, together or separately:

Provided that —

- (a) A contributory shall not be entitled to present a winding-up petition unless —
 - (i) either the number of members is reduced below two; or²⁵⁴
 - (ii) the shares in respect of which he is a contributory, 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 before the commencement of the winding-up, or have devolved on him through the death of a former holder; and
 - (b) If the ground of the petition is that in section 162(2) of this Act, a winding-up petition may be presented by the Treasury; and²⁵⁵
 - (c) The court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding-up has been established to the satisfaction of the court.
 - (d) If it appears to the Financial Supervision Commission from any information or document in its possession that it is expedient in the public interest that a company should be wound up, it may, unless the body is already being wound up by the court, present a petition for it to be so wound up if the court thinks it proper for it to be so wound up.²⁵⁶
- (2) Where a company is being wound-up voluntarily or subject to supervision a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section, but the court



shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3)²⁵⁷

165 Powers of court on hearing petition

(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2)²⁵⁸

166 Power to stay or restrain proceedings against company

At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company or any creditor or contributory may —

- (a) where any action or proceeding against the company is pending in the High Court, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

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

167 Avoidance of dispositions of property, etc after commencement of winding up

In a winding up by the court, any disposition of the property of the company including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

168 Avoidance of attachments, etc

Where any company is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Commencement of Winding Up

169 Commencement of winding up by the court

- (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.
- (2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Consequences of Winding-up Order

170 Copy of order to be forwarded to Department

On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the Department who shall make a minute thereof in its books relating to the company.²⁵⁹

171 Actions stayed on winding-up order

When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

172 Effect of winding-up order

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

Official Receiver in Winding Up

173 Official receiver appointed by Treasury

- (1) For the purposes of this Act so far as it relates to the winding up of companies by the court, the term “official receiver” means the official receiver, if any, appointed by the Treasury.²⁶⁰
- (2) Any such officer shall for the purpose of his duties under this Act be styled “the official receiver”.

174 Appointment of official receiver by court in certain cases

If in the case of the winding up of any company by the court it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the person who would by virtue of the last foregoing section of this Act be the official receiver, should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

175 Statement of company's affairs to be submitted to official receiver

- (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of the creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.
- (2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons —
 - (a) who are or have been directors or officers of the company;
 - (b) who have taken part in the formation of the company at any time within one year before the relevant date;
 - (c) who are in the employment of the company or have been in the employment of the company within the said year and are in the opinion of the official receiver capable of giving the information required;
 - (d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.
- (3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.
- (4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, 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 official receiver may consider reasonable, subject to an appeal to the court.

- (5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to —
 - (a) on information, a fine;
 - (b) on summary trial, a fine not exceeding £5,000.²⁶¹
- (6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the fee prescribed under section 283A, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.²⁶²
- (7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.
- (8) In this section the expression 'the relevant date' means in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order.

176 Report by official receiver

- (1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court —
 - (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
 - (b) if the company has failed, as to the causes of the failure; and
 - (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.
- (2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.
- (3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have

the further powers provided in sections two hundred and seven and two hundred and eight of this Act.

Liquidators

177 Power of court to appoint liquidators

For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

178 Appointment and powers of provisional liquidator

- (1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of the winding up petition.
- (2) The appointment of a provisional liquidator may be made at any time before the making of a winding up order and either the official receiver or any other fit person may be appointed.
- (3) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

179 Appointment, style, etc of liquidators in winding up

The following provisions with respect to liquidators shall have effect on a winding-up order being made —

- (1) The official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such:
- (2) The official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver:
- (3) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit:
- (4) In a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company:
- (5) The official receiver shall by virtue of his office be the liquidator during any vacancy:
- (6) A liquidator shall be described, where a person other than the official receiver is liquidator, by the style of 'the liquidator,' and, where the

official receiver is liquidator, by the style of 'the official receiver and liquidator,' of the particular company in respect of which he is appointed, and not by his individual name.

180 Provisions where person other than official receiver is appointed liquidator

Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, that person —

- (1) shall not be capable of acting as liquidator until he has notified his appointment to the Department and given security in the prescribed manner to the satisfaction of the court,²⁶³
- (2) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

181 General provisions as to liquidators

- (1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.
- (2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators their remuneration shall be distributed among them in such proportions as the court directs.
- (3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.
- (4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.
- (5) Subject to the provisions of section two hundred and sixty-two of this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

182 Custody of company's property

- (1) Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, 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.

- (2) In a winding up by the court, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

183 Vesting of property of company in liquidator

Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

184 Powers of liquidator

- (1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection —
- (a) to bring or defend any action or other legal proceeding 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 an advocate or other law agent 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 with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
 - (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 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.
- (2) The liquidator in a winding up by the court shall have power —
- (a) to sell the real or 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:

- (b) 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:
 - (c) to prove, rank, and claim 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:
 - (d) to draw, accept, make, and indorse 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 indorsed by or on behalf of the company in the course of its business:
 - (e) to raise on the security of the assets of the company any money requisite:
 - (f) 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 of any money due from a 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 purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:
 - (g) to appoint an agent to do any business which the liquidator is unable to do himself:
 - (h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.
- (3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section, shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

185 Exercise and control of liquidator's powers

- (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at

any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

- (2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.
- (3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.
- (4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.
- (5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks fit.

186 Books to be kept by liquidator

Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed and until there is a prescribed form in some convenient form, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.²⁶⁴

187 Payments by liquidator into court, etc

- (1) Every liquidator of a company which is being wound up by the court shall, in such manner and at such times as the court direct, pay the money received by him into court:

Provided that, if the committee of inspection satisfy the court that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the court shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

- (2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the court in any

particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

- (3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

188 Audit of liquidator's accounts in winding up

- (1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Rolls Office, or as the court shall direct, an account of his receipts and payments as liquidator.
- (2) The account shall be in a prescribed form or until a form is prescribed in a convenient form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.
- (3) The court may cause the account to be audited and, whether or not the court decides to cause an account to be audited, the liquidator shall furnish the court with such vouchers and information as the court may require, and the court may at any time require the production of and inspect any books or accounts kept by the liquidator.²⁶⁵
- (4) When the account has been audited (or, as the case may be, forthwith if the court decides not to have an audit) a copy thereof shall be filed and kept at the Rolls Office, and such copy shall be open to the inspection of any creditor, or of any person interested.²⁶⁶
- (5) In case the court so orders, the liquidator shall, when the account has been audited (alternatively, when he has been notified of the court's decision not to have an audit) cause the account or a summary of it to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.²⁶⁷

189 Control of court over liquidators

- (1) The court shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the court by any creditor or contributory in regard thereto, the court shall inquire into the matter, and take such action thereon as they may think expedient.

- (2) The court may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the court thinks fit, require such liquidator or any other person to attend before the court to be examined on oath concerning the winding up.
- (3) The court may also direct a local investigation to be made of the books and vouchers of the liquidator.

190 Release of liquidators

- (1) When the liquidator of a company which is being wound up by the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.
- (2) Where the release of a liquidator is withheld the court may on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
- (3) An order of the court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Committees of Inspection

191 Meetings of creditors and contributories to determine whether committee of inspection shall be appointed

- (1) When a winding up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the

official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

- (2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

192 Constitution and proceedings of committee of inspection

- (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference may be determined by the court.
- (2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.
- (4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
- (5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.
- (6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.
- (7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.
- (8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

193 Powers of court where no committee of inspection

Where in the case of a winding up there is no committee of inspection, the court may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

*General Powers of Court in case of Winding Up by Court***194 Power to stay winding up**

- (1) The court may at any time after an order for winding up, on the application either of the liquidator, or the official receiver, or any creditor 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, 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 the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

195 Settlement of list of contributories and application of assets

- (1) As soon as may be after making a winding-up order, the court 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 discharge of its liabilities.

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

- (2) In settling the list of contributories, the court 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.

196 Delivery of property to liquidator

The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is *prima facie* entitled.

197 Payment of debts due by contributory to company and extent to which set off allowed

- (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.
- (2) The court in making such an order may —
 - (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and
 - (b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.
- (3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

198 Power of court to make calls

- (1) The court may, at any time after making 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 the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for the payment of any calls so made.
- (2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

199 Payment into court of moneys due to company

The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into court 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.

200 Order on contributory conclusive evidence

- (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.
- (2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

201 Appointment of special manager

- (1) Where in proceedings the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.
- (2) The special manager shall give such security and account in such manner as the court direct.
- (3) The special manager shall receive such remuneration as may be fixed by the court.

202 Power to exclude creditors not proving in time

The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

203 Adjustment of rights of contributories

The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

204 Inspection of books by creditors and contributories

The court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

205 Power to order costs of winding up to be paid out of assets

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs,

charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

206 Power to summon persons suspected of having property of company

- (1) The court may at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.
- (2) The court may examine him on oath concerning the matters aforesaid, 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 him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the 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 it), the court may cause him to be apprehended and brought before the court for examination.

207 Power to order public examination of promoters, directors, etc

- (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.
- (2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the court in that behalf, employ an advocate.
- (3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by his advocate.

- (4) The court may put such questions to the person examined as the court thinks fit.
- (5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.
- (6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ an advocate, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

Provided that if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.
- (7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.
- (8) The court may, if it thinks fit, adjourn the examination from time to time.

208 **[Repealed]**²⁶⁸

209 **Power to arrest absconding contributory**

The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the Isle of Man, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

210 **Powers of court cumulative**

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

211 Delegation to liquidator of certain powers of court

Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act in respect of the following matters —

- (1) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (2) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (3) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (4) the making of calls;
- (5) the fixing of a time within which debts and claims must be proved;

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

212 Dissolution of company

- (1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (2) The order shall within fourteen days from the date thereof be reported by the liquidator to the Department who shall make in its books a minute of the dissolution of the company.²⁶⁹
- (3) If the liquidator makes default in complying with the requirements of this section he shall be liable to —
 - (a) on information, a fine;
 - (b) on summary trial, a fine not exceeding £5,000.²⁷⁰

*Enforcement of and Appeal from Orders***213 Appeals from orders**

Rehearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the court, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had, from any order or decision of the same court in cases within its ordinary jurisdiction; subject to this restriction, that no rehearing or appeal shall be heard unless the petition for such rehearing or appeal has been presented within three

weeks after the order or decision complained of has been made, unless such time is extended by the court whose order or decision is appealed from.

(III) VOLUNTARY WINDING UP

Resolutions for, and commencement of Voluntary Winding Up

214 Circumstances in which company may be wound up voluntarily

- (1) A company may be wound up voluntarily —
 - (a) When the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
 - (b) If the company resolves by special resolution that the company be wound up voluntarily;
 - (c) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.
- (2) In this Act the expression “**a resolution for voluntary winding-up**” means a resolution passed under any of the provisions of subsection (1) of this section.

215 Notice of resolution to wind up voluntarily

- (1) When a company has passed a resolution for voluntary winding up, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in two or more newspapers published and circulating in the Isle of Man.²⁷¹
- (2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

215A Commencement of voluntary winding up

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

*Effect of Voluntary Winding Up***216 Effect of voluntary winding up on business and status of company**

In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

217 Avoidance of transfers, etc after commencement of voluntary winding up

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

*Declaration of Solvency***218 Statutory declaration of solvency in case of proposal to wind up voluntarily**

- (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up.
- (2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless it is delivered to the Department for registration before the date mentioned in subsection (1) of this section and it is made within the 6 weeks immediately preceding the date of the passing of the resolution for winding up.²⁷²
- (3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up," and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "creditors' voluntary winding up".

*Provisions applicable to a Members' Voluntary Winding Up***219 Provisions applicable to a members' voluntary winding up**

The provisions contained in the five sections of this Act next following shall apply in relation to a members' voluntary winding up.

220 Power of company to appoint and fix remuneration of liquidators

- (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.
- (2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

221 Power to fill vacancy in office of liquidator

- (1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

222 Power of liquidator to accept shares, etc as consideration for sale of property of company

- (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

- (2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.
- (3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.
- (4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.
- (5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.
- (6) For the purposes of an arbitration under this section, the following provisions shall have effect —

Appointment of arbitrator

- (a) Unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall, by writing under his hand, nominate and appoint an arbitrator, to whom such dispute shall be referred; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

In case of death, etc, of arbitrator, how vacancy supplied

- (b) If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, or refuse, or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing



some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed ex parte; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Appointment of umpire

- (c) Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any matters on which they shall differ; and if such umpire shall die, or refuse, or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire by court in certain cases

- (d) If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, it shall be lawful for the court, if it thinks fit, in any case on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

Arbitrators may call for books

- (e) The said arbitrators or the umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Arbitrators may award costs

- (f) Except where by this Act it is otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators or their umpires, as the case may be.

223 Duty of liquidator to call general meeting at end of each year

- (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

- (2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding £1,000.

224 Final meeting and dissolution

- (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.
- (2) The meeting shall be called by advertisement in two or more newspapers published and circulating in the Isle of Man and in the London Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.
- (3) Within one week after the meeting, the liquidator shall send to the Department a copy of the account, and shall make a return to it of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to —
- (a) on information, a fine;
- (b) on summary trial, a fine not exceeding £5,000:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.²⁷³

- (4) The Department on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.²⁷⁴

- (5) . It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Department an office copy of the order for registration, and if that person fails so to do he shall be liable to —
- (a) on information, a fine;
- (b) on summary trial, a fine not exceeding £5,000.²⁷⁵

*Provisions applicable to a Creditors' Voluntary Winding Up***225 Provisions applicable to a creditors' winding up**

The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding up.

226 Meeting of creditors

- (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.
- (2) The company shall cause notice of the meeting of the creditors to be advertised once in two newspapers published and circulating in the Isle of Man and in the London Gazette.
- (3) The directors of the company shall —
 - (a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and
 - (b) appoint one of their number to preside at the said meeting.
- (4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.
- (5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.
- (6) If default is made —
 - (a) by the company in complying with subsections (1) and (2) of this section;
 - (b) by the directors of the company in complying with subsection (3) of this section;
 - (c) by any director of the company in complying with subsection (4) of this section;

the company, directors or director, as the case may be, shall be liable to —

 - (a) on information, a fine;

- (b) on summary trial, a fine not exceeding £5,000;
and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.²⁷⁶

227 Appointment of liquidator

The creditors and the company at their respective meetings mentioned in the last foregoing section of this Act may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

228 Appointment of committee of inspection

- (1) The creditors at the meeting to be held in pursuance of section two hundred and twenty-six of this Act or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

- (2) Subject to the provisions of this section and to general rules, the provisions of section one hundred and ninety-two (except subsection 1) of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

229 Fixing of liquidators' remuneration and cesser of directors' powers

- (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.
- (2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

230 Power to fill vacancy in office of liquidator

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

231 Application of s 222 to a creditors' voluntary winding up

The provisions of section two hundred and twenty-two of this Act shall apply in the case of a creditors' voluntary winding up, as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.

232 Duty of liquidator to call meetings of company and of creditors at end of each year

- (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.
- (2) If the liquidator fails to comply with this section he shall be liable to a fine not exceeding £1,000.

233 Final meeting and dissolution

- (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.
- (2) Each such meeting shall be called by advertisement in two newspapers published and circulating in the Isle of Man and in the London Gazette,

specifying the time, place, and object thereof, and published one month at least before the meeting.

- (3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Department a copy of the account, and shall make a return to it of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to —

- (a) on information, a fine;
- (b) on summary trial, a fine not exceeding £5,000:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.²⁷⁷

- (4) The Department on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.²⁷⁸

- (5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Department an office copy of the order for registration, and if that person fails so to do he shall be liable to —

- (a) on information, a fine;
- (b) on summary trial, a fine not exceeding £5,000.²⁷⁹

Provisions applicable to every Voluntary Winding Up

234 Provisions applicable to every voluntary winding up

The provisions contained in the nine sections of this Act next following shall apply to every voluntary winding up whether a members' or a creditors' winding up.

235 Distribution of property of company

Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities

pari passu, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

236 Powers and duties of liquidator in voluntary winding up

- (1) The liquidator may —
 - (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section one hundred and eighty-four of this Act to a liquidator in a winding up by the court:
 - (b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court:
 - (c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories:
 - (d) exercise the power of the court of making calls:
 - (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.
- (2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.
- (3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

237 Appointment of liquidator

- (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

238 Notice by liquidator of his appointment

- (1) The liquidator shall, within twenty-one days after his appointment, deliver to the Department for registration a notice of his appointment in the prescribed form.²⁸⁰

- (2) If the liquidator fails to comply with the requirements of this section he shall be liable to —
 - (a) on information, a fine;
 - (b) on summary trial, a fine not exceeding £5,000.²⁸¹

239 Arrangement when binding on creditors

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.
- (2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

240 Power to apply to court to have questions determined or powers exercised

- (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.
- (2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

241 Costs of voluntary winding up

All costs, charges, and expenses properly incurred in the winding up, including remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

242 Saving for rights of creditors and contributories

The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(IV) WINDING UP SUBJECT TO SUPERVISION OF COURT**243 Power to order winding up subject to supervision**

When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

244 Effect of petition for winding up subject to supervision

A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

245 Application of ss 167 and 168 to winding up subject to supervision

A winding up subject to the supervision of the court shall, for the purposes of section one hundred and sixty-seven and one hundred and sixty-eight of this Act, be deemed to be a winding up by the court.

246 Power of court to appoint additional liquidators

- (1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.
- (2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.
- (3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

246A Effect of supervision order

- (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (d), (e) and (f) of subsection (1) of section one hundred and eighty-four of this Act shall not be exercised by the liquidator except with the sanction of the court

or, in a case where before the order the winding up was a creditor's voluntary winding up, with the sanction of either the court or the committee of inspection.

- (2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Act which are set out in the Eighth Schedule to this Act, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that where the order for winding up subject to supervision was made in relation to a creditor's voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section one hundred and ninety-two (except subsection (1) thereof) of this Act, except in so far as the operation of those sections is excluded in a voluntary winding up by general rules.

(V) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and Ranking of Claims

247 Debts of all descriptions to be proved

In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

248 Application of bankruptcy rules in winding up of insolvent companies

In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

249 Preferential payments

- (1) In a winding up there shall be paid in priority to all other debts the debts specified in the *Preferential Payments Act 1908*.²⁸²
- (2)²⁸³

Effect of Winding Up on antecedent and other Transactions

250 Fraudulent preference

- (1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.
- (2) For the purposes of this section the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.
- (3) 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.

251 Effect of floating charge

Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

252 Disclaimer of onerous property in case of company being wound up

- (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property.

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, 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.
- (3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.
- (4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period, disclaim the contract, the company shall be deemed to have adopted it.
- (5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.
- (6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person —

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property of any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

- (7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

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

- (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that —

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and
- (b) a person who purchases in good faith under a sale by the coroner any goods of a company on which an execution has been levied

shall in all cases acquire a good title to them against the liquidator.

- (2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.
- (3) In this section the expression "goods" includes all chattels personal, and the expression 'coroner' includes any officer charged with the execution of a writ or other process.

254 Duties of coroner as to goods taken in execution

- (1) Where any goods of a company are taken in execution and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the coroner that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the coroner shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.
- (2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a company are sold or money is paid in order to avoid sale, the coroner shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the coroner shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.
- (3) In this section the expression "goods" includes all chattels personal, and the expression "coroner" includes any officer charged with the execution of a writ or other process.

Offences antecedent to or in course of Winding Up

255 Offences by officers of companies in liquidation

- (1) If any person, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or



voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up —

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company; or
- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards; or
- (f) makes any material omission in any statement relating to the affairs of the company; or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent

parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or

- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or
- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be guilty of a misdemeanour and shall, in the case of the offences mentioned respectively in paragraphs (m), (n), and (o) of this subsection, be liable on conviction on information to penal servitude for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months, or to —

- (a) on information, a fine,
- (b) on summary trial, a fine not exceeding £5,000;

and in the case of any other offence shall be liable on conviction on information to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months, or to —

- (a) on information, a fine,
- (b) on summary trial, a fine not exceeding £5,000:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n), and (o), if the accused proves that he had no intent to defraud, and to a charge under any of the paragraphs

(h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.²⁸⁴

- (2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (o) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanour, and on conviction thereof liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour.
- (3) For the purpose of this section, the expression 'director' shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

256 Penalty for falsification of books

If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

257 Frauds by officers of companies which have gone into liquidation

If any person, being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up —

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against the property of the company;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be guilty of a misdemeanour and shall be liable on conviction on information to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months, or to —

- (a) on information, a fine,

- (b) on summary trial, a fine of £5,000.²⁸⁵

258 [Repealed]²⁸⁶

259 Responsibility of directors for fraudulent trading

- (1) If in the course of the winding up of a company it appears that any business of the company has been carried out with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver or the liquidator, or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in 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) Where the court makes any such declaration, it may give such further 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 director 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 person on his behalf, or any person claiming as assignee from or through the director, company or person, 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.

For the purposes of this subsection the expression 'assignee' includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

- (3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on information to imprisonment for a term not exceeding one year.
- (4)²⁸⁷
- (5) For the purposes of this section, the expression 'director' shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

- (6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) of this section is made in the case of a winding up the declaration shall be deemed to be a final judgment within the meaning of the Bankruptcy Acts.
- (7) It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application under subsection (1) of this section the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.²⁸⁸
- (8)²⁸⁹

260 Power of court to assess damages against delinquent directors, etc

- (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.
- (2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.
- (3) Where in the case of a winding up an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of the Bankruptcy Acts.

261 Prosecution of delinquent officers and members of company

- (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer, or any 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 winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Attorney General.
- (2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any

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 to 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) If on any report to the Attorney General under subsection (2) of this section it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.
- (4) If it appears to the court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter 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 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 had been made in pursuance of the provisions of subsection (2) of this section.
- (5) If, where any matter is reported or referred to the Attorney General under this section, he considers that the case is one in which a prosecution ought to be instituted, and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, 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.

For the purposes of this subsection, the expression 'agent' in relation to a company shall be deemed to include any banker or advocate of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (6) 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.



- (7) The court may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed by the Treasurer of the Isle of Man.

Subject to any direction under this subsection and to any mortgages or charges on the assets of the company and any debts to which priority is given by section two hundred and forty-nine of this Act, all such costs and expenses as aforesaid shall be payable out of those assets in priority to all other liabilities payable thereout.

Supplementary Provisions as to Winding Up

262 Disqualification for appointment as liquidator

- (1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.
- (2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before the commencement of this Act, but subject as aforesaid any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding £5,000.

263 Enforcement of duty of liquidator to make returns, etc

- (1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the Department, make an order directing the liquidator to make good the default within such time as may be specified in the order.²⁹⁰
- (2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.
- (3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

264 Notification that a company is in liquidation

- (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of

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

- (2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company, and every receiver or manager, who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding £5,000.

265 Books of company to be evidence

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

266 Disposal of books and papers of company

- (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say —
- (a) In the case of a winding up by, or subject to the supervision of, the court in such way as the court directs;
 - (b) In the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.
- (2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.
- (3) Provision may be made by general rules for enabling the court to prevent, for such period (not exceeding five years from the dissolution of the company) as the court think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the court.
- (4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the court thereunder, he shall be liable to a fine not exceeding £5,000.

267 Information as to pending liquidations

- (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Department a statement in the prescribed form, or until a form is prescribed in some convenient form, and containing the prescribed particulars, or until the same are prescribed the fullest practicable particulars, with respect to the proceedings in and position of the liquidation.²⁹¹
- (2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the fee prescribed under section 283A, to inspect the statement, and to receive a copy thereof or extract therefrom.²⁹²
- (3) If a liquidator fails to comply with this section he shall be liable to —
 - (a) on information, a fine;
 - (b) on summary trial, a fine not exceeding £5,000;
 and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of court, and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.²⁹³

268 Unclaimed assets to be paid into court

- (1) If where a company is being wound up, it appears either from any statement sent to the Department under the last foregoing section or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt the liquidator shall forthwith pay the said money into court.²⁹⁴
- (2) Any person claiming to be entitled to any money paid into the court in pursuance of this section may apply to the court for payment thereof, and the court may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

269 Resolutions passed at adjourned meetings of creditors and contributories

Where after the commencement of this Act a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date

on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court

270 Meetings to ascertain wishes of creditors or contributories

- (1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.
- (2) In the case of creditors, regard shall be had to the value of each creditor's debt.
- (3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

271 Affidavits, etc in United Kingdom and dominions

- (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.
- (2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

Provisions as to Dissolution

272 Power of court to declare dissolution of company void

- (1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.
- (2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further

time as the court may allow, to deliver to the Department for registration an office copy of the order, and if that person fails so to do he shall be liable to —

- (a) on information, a fine;
- (b) on summary trial, a fine not exceeding £5,000.²⁹⁵

273 Department may strike defunct company off register

- (1) Where the Department, having consulted the Financial Supervision Commission, has reasonable cause to believe that a company is not carrying on business or in operation, it may send to the company a letter —
 - (a) inquiring whether the company is carrying on business or in operation; and
 - (b) stating that if no answer is received within two months from the date of the letter, a notice will be published with a view to striking the name of the company off the register.²⁹⁶
- (2) A letter under subsection (1) of this section shall be sent by recorded delivery.²⁹⁷
- (3) If the Department either receives an answer to the effect that the company is not carrying on business or in operation, or does not within two months after sending the letter under subsection (1) of this section receive any answer, it will publish, and send to the company by post, a notice that at the expiration of two months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.²⁹⁸
- (4) If, in any case where a company is being wound up, the Department has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Department shall publish and send to the company or the liquidator, if any, a like notice as is provided in the last preceding subsection.²⁹⁹
- (5) At the expiration of the time mentioned in the notice the Department may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof, and on the publication the company shall be dissolved:

Provided that —

 - (a) the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved; and

- (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.³⁰⁰
- (6) If a company, any director, member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company, any director, member or creditor before the expiration of 12 years from the publication of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the Department for registration together with such fee as may be prescribed under section 283A for the restoration of the company to the register, the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the 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 not been struck off.³⁰¹
- (7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered or the Department has reasonable cause to believe that the registered office has been abandoned, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the Department, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.³⁰²
- (8) For the purposes of this section, a company which has failed to forward an annual return to the Department within 6 months after the company's return date under section 109(1) of this Act shall be deemed not to be in operation until such return is forwarded to the Department.³⁰³
- (9) Subsection (8) of this section is without prejudice to section 109(4) of this Act.³⁰⁴
- (10) If the Department has reasonable cause to believe that a company has abandoned its registered office, it may strike the name of that company off the register in the same manner and subject to the same notice and conditions as a company that is not in operation.³⁰⁵
- (11) In any case to which subsection (10) applies, a requirement in this section to send a letter or notice to the company shall be treated as complied with if the letter or notice is sent to each person who, on the date on

which the letter or notice is sent, is shown as a director of the company in the documents kept by the Department.³⁰⁶

- (12) For the purposes of this section and section 273A, a notice shall be considered published —
- (a) by publishing a notice in one edition of a newspaper published and circulating in the Isle of Man; and
 - (b) by publishing a notice on the Department website, for a minimum period of one month; and³⁰⁷
 - (c) by the Department maintaining a current list in the prescribed form and with the prescribed particulars of all companies in respect of which notice has been published and by making such list available for inspection by any person.³⁰⁸

273A Alternative procedure for dissolving solvent companies

- (1) Where a company (not being a public company) has ceased to operate and has discharged all its debts and liabilities (other than those owed to its shareholders in respect of their shares, if any) any officer or member of the company may apply to the Department for a declaration of dissolution of the company.³⁰⁹
- (2) An application by a company under this section in the prescribed form for a declaration of dissolution shall be in writing and shall be accompanied by a statutory declaration made by an officer or member of the company stating that the company has ceased to operate, that it has complied with its obligations under sections 107 to 110 and that to the best of his knowledge and belief and having made full enquiry into the affairs of the company, he is satisfied that —
 - (a) the company has discharged all its debts and liabilities (other than those owed to its shareholders in respect of their shares, if any); and
 - (b) the particulars contained within the last annual return of the company (or, in the case of a company for which an annual return has not fallen due, the particulars filed on first incorporation) remain accurate at the date of making the statutory declaration or that they are accurate as amended by the applicant at the date of making the statutory declaration.
- (3) Upon receipt of an application under subsection (1) the Department shall —
 - (a) publish a notice in the manner prescribed by section 273(12) to the effect that the applicant has applied to the Department for a declaration of dissolution of the company and that, unless written objection is made to the Department within one month of the date

- of publication of the notice the Department may dissolve the company; and³¹⁰
- (b) within one month of the date of publication of the notice obtain written notice from the Financial Supervision Commission, the Assessor of Income Tax, the Collector of Customs and Excise and the Attorney General that they have no objection to the making of a declaration of dissolution in respect of the company.³¹¹
- (4) The court, on being satisfied that the period made available to the Assessor of Income Tax or the Collector of Customs and Excise or the Attorney General by the Department for the making of objections under subsection (3)(b) requires to be extended, may upon application order that the period for objections shall be extended on such terms and conditions as it deems appropriate.³¹²
 - (5) Before making an application to the Department under this section, the applicant shall ensure that there has been sent by pre-paid post to each director, the secretary and to each member of the company at the last address of which the company has notice, a notice to the effect that the applicant proposes to apply to the Department for a declaration of dissolution of that company and that, unless written objection is made to the Department within one month of the date the notice was posted, the Department may dissolve the company.³¹³
 - (6) The Department shall not make a declaration of dissolution of a company earlier than one month after the date of the publication of the notice required by subsection (3) of this section.³¹⁴
 - (7) On receipt of any written objection to the dissolution of the company, the Department shall notify the applicant for the declaration of dissolution of the receipt of the objection and of the identity of the objector.³¹⁵
 - (8) Where a person has objected to the dissolution of the company, the Department shall not declare the dissolution of it unless —
 - (a) the objection is withdrawn; or
 - (b) the Department decides that the objection is without justification and the objector has not appealed against the Financial Supervision Commission's decision within the time specified in section 283C or the court has upheld the decision.³¹⁶
 - (9) If the Department is not prevented from declaring the dissolution of a company pursuant to this section and agrees to the dissolution, it shall notify the company that, subject to the company's memorandum of association and articles of association, it is entitled to distribute its surplus assets among its members according to their respective rights and, notwithstanding any other provision of this Act or any rule of law, the company may distribute its surplus assets accordingly.³¹⁷

(10) Subject to subsection (11) of this section, on receipt of notification from a company —

- (i) that its surplus assets have been distributed in accordance with subsection (9); or
- (ii) that the company having carried out full inquiry is unable to distribute its surplus assets for cause shown;

the Department shall publish a notice in the manner prescribed in section 273(12) which declares that the company is dissolved and, on the publication of the notice the company shall be dissolved and any surplus assets which have not been distributed shall be deemed to be *bona vacantia* in accordance with section 274.³¹⁸

(11) Notwithstanding the dissolution of the company —

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) notwithstanding that a company has been dissolved, or that its surplus assets have been distributed in accordance with this section, the court may wind up the company as if it had not been dissolved, or its surplus assets had not been distributed, as the case may be.

(12) Where a company has been dissolved pursuant to this section, the court, on an application made by the Department, an officer or a member or creditor of the company before the expiration of 12 years from the publication of the notice of dissolution, may, if satisfied that at the time of dissolution of the company it was in operation or had not discharged all its debts and liabilities or otherwise that it is just that the dissolution of the company be revoked, order that the dissolution of the company be revoked, and upon a sealed copy of the order being delivered to the Department for registration, the company shall be deemed to have continued in existence as if it had not been dissolved; and the court may by the 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 company had not been dissolved.³¹⁹

(13) An order under subsection (12) may be made on such terms and conditions as the court thinks fit.

(14) For the purposes of this section, the Treasury may make regulations permitting applications to be made to it in appropriate cases and subject to conditions for the remission of fees and duties due under section 283A of this Act or sections 4 and 5 of the *Non-Resident Company Duty Act 1986*.³²⁰

273B Restoration of dissolved companies to the register

- (1) A company, any director, member or creditor thereof who feels aggrieved by the company having been either —
 - (a) struck off the register under section 273 of this Act; or
 - (b) dissolved under section 273A of this Act,
may, before the expiration of 12 years from the publication of a notice under section 273(5) or section 273A(8), make application to the Department for a direction under this section.³²¹
- (1A) Upon receipt of an application under subsection (1) the Department shall, within a reasonable time, publish notice of the application on the Department website and shall maintain a current list of applications.³²²
- (2) An application under subsection (1) shall be in the prescribed form and shall be accompanied by —
 - (a) a copy of the notice given under subsection (3) of this section; and
 - (b) written notice from the Attorney General, the Assessor of Income Tax and the Collector of Customs and Excise stating that they have no objection to the restoration of the company to the register.³²³
- (3) Before making an application to the Department under subsection (1) of this section, the applicant shall ensure that there has been —
 - (a) published in one newspaper published and circulating in the Isle of Man; and³²⁴
 - (b) sent by post to each director, the secretary and to each member of the company at the last address of which the company has notice,³²⁵
a notice to the effect that the applicant proposes to apply to the Department for a direction restoring the company to the register and that unless written objection is made to the Department within 30 days of the date of publishing or posting, as the case may be, the Department may make such direction.³²⁶
- (4) The Department shall not make a direction under this section earlier than 30 days after the date of publication or posting, as the case may be, of the last notice published or posted for the purposes of subsection (3) of this section.³²⁷
- (5) On receipt of any written objection to the restoration of the company, the Department shall forthwith notify the applicant of the receipt of the objection and of the identity of the objector.³²⁸
- (6) The Department shall not make a direction under this section unless —
 - (a) there are no objections to the restoration of the company under this section; or

- (b) all objections are withdrawn; or
 - (c) the Department decides that the objections are completely without justification and that the objector has not appealed against the Financial Supervision Commission's decision within the time specified in section 283C of this Act or the court has upheld the Financial Supervision Commission's decision.³²⁹
- (7) On receipt of an application under this section the Department, if satisfied that [there]* are good grounds for restoration of the company to the register, may direct the name of the company to be restored to the register.^{330 331}
- (8) A direction given under this section may be made subject to conditions and the Department may include such further directions and 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 company had not been dissolved and without prejudice to the generality of the foregoing any fees and duties due to the Department shall be due and payable at the rates prevailing at the date of such restoration.³³²
- (9) When the applicant delivers a certified copy of the direction for registration the company shall be deemed to have continued in existence as if its name had not been struck off.
- (10) This section is without prejudice to the powers of the court under sections 273 and 273A of this Act.³³³

274 Property of dissolved company to be bona vacantia

- (1) Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall be deemed to be bona vacantia and shall accordingly vest in the Treasury in trust for the Crown and may be dealt with in the same manner as other bona vacantia accruing to the Crown.³³⁴
- (2) Except as provided by section 274B below, this section shall have effect subject and without prejudice to any order made by the court under sections 272 or 273 of this Act.³³⁵

274A Power to disclaim title to property vesting under section 274

- (1) Where any property vests in the Treasury under section 274 above, the Treasury's title thereto under that section may be disclaimed by a notice by the Treasury.
- (2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Treasury under section 274, and subsections (2) and (6) of section 252 of

this Act shall apply in relation to the property as if it had been disclaimed under subsection (1) of the said section 252 immediately before the dissolution of the company.

- (3) The right to execute a notice of disclaimer under this section may be waived by the Treasury either expressly or by taking possession or other act evincing that intention.³³⁶

274B Disposal of property vesting under section 274

- (1) Where a company is dissolved and any property or right vested in or held on trust for that company immediately before its dissolution vests as bona vacantia accruing to the Treasury by virtue of section 274 above, the Treasury may dispose of, or of an interest in, that property or right notwithstanding that an order may be made under section 272(l) or 273(6) of this Act in relation to that company; and where any such order is made —
 - (a) it shall not affect that disposition (but without prejudice to that order so far as it relates to any other property or right previously vested in or held on trust for the company); and
 - (b) the Treasury shall pay to the company an amount equal to the amount of any consideration received for the property or right, or interest therein, or to the value of any such consideration at the time of the disposition, or, if no consideration was received, an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.
- (2) This section applies in relation to the disposition of any property, right or interest on or after the day on which this section comes into operation, whether the company concerned was dissolved before, on or after that day.³³⁷

274C [Repealed]³³⁸

Officers

275 Officers and remuneration

- (1) The Treasury may appoint such officers as may be required for the execution of this Act, and may remove any person so appointed.³³⁹
- (2) The Treasury shall direct whether any and what remuneration is to be allowed to any officer performing any duties under this Act in relation to the winding up of companies, and may vary, increase, or diminish that remuneration as it thinks fit.³⁴⁰

*Rules and Fees***276 Fees to be paid, etc**

- (1) General rules for carrying into effect the objects of this Act shall be made from time to time as circumstances require in manner provided by Part III of the *High Court Act 1991*, and the provisions as to rules and the practice of the courts in such Act shall be applicable to proceedings under this Act.³⁴¹
- (2) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies such fees as may be prescribed under section 283A.³⁴²

PART VI – RECEIVERS AND MANAGERS**277 Disqualification for appointment as receiver**

- (1) A body corporate shall not be qualified for appointment as receiver of the property of a company.
- (2) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid if acting under an appointment made before the commencement of this Act, but subject as aforesaid any body corporate which acts as receiver as aforesaid shall be liable to —
 - (a) on information, a fine;
 - (b) on summary trial, a fine not exceeding £5,000.³⁴³

278 Power to appoint official receiver as receiver for debenture holders or creditors

Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed.

279 Notification that receiver or manager has been appointed

- (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company, or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.
- (2) If default is made in complying with the requirements of this section, the company and every director, manager, secretary, or other officer of the company, and every liquidator of the company, and every receiver or