

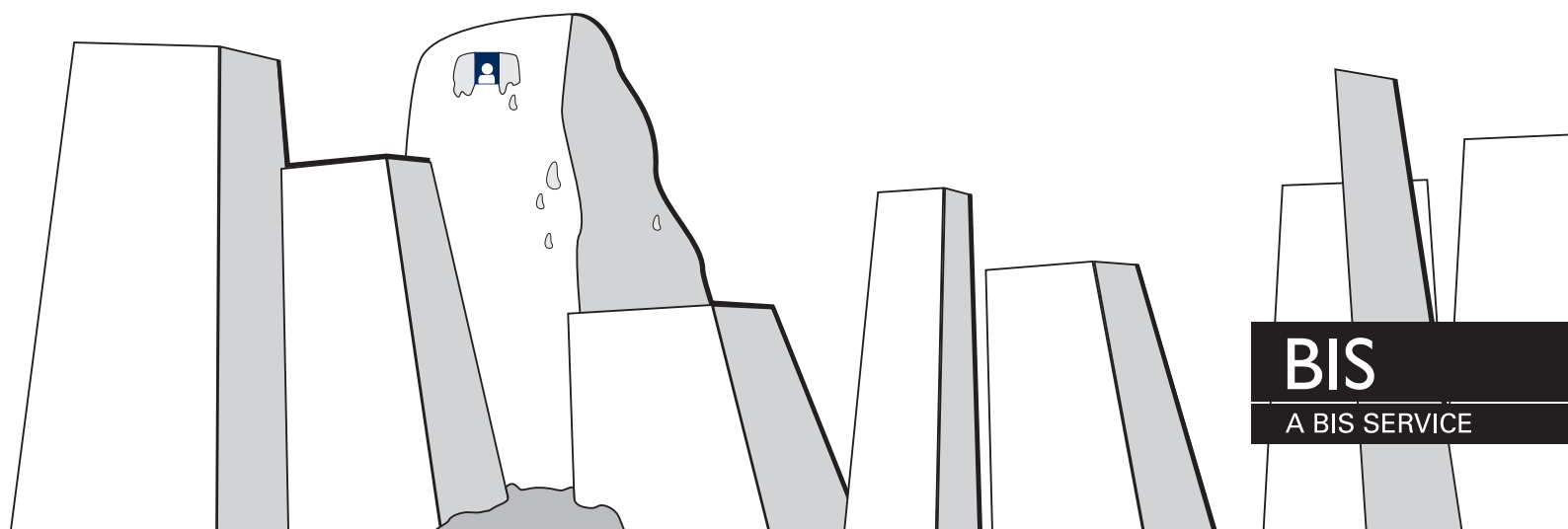
Companies Act 2006



*Companies House*  
— for the record —

# liquidation and insolvency

GPO8 - December 2011



**BIS**

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This guidance is available in alternative formats which include Braille, large print and audio tape. For further details please visit our website or email our enquiries section or telephone our contact centre on 0303 1234 500

## Is this guidance for you?

This guide will be relevant to you if you:

- are a director or secretary of a company
- act as an adviser to a company

## **Contents**

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This guide answers many frequently asked questions and provides information on completing the most commonly used filings relating to this area. The guide is not drafted with unusual or complex transactions in mind. Specialist professional advice may be needed in those circumstances.

## Introduction

This guidance provides a basic overview of insolvency and liquidation proceedings and more detailed information about the documents that must be delivered to the Registrar of Companies. It summarises some of the rules that apply to corporate voluntary arrangements, moratoria, administrations, receivers, voluntary liquidations, compulsory liquidations and EC regulations.

Companies House can assist with queries relating to the delivery of documents to the Registrar. Other queries should be addressed to the Insolvency Service in the first instance. Insolvency proceedings often involve court proceedings and practitioners may be required to convene meetings and prepare statutory reports. It is important to note that not all of this information has to be sent to the Registrar.

Because of the complexity of the requirements, this guide is not a “how to” guide that tells the reader everything he or she needs to know to wind up an insolvent company. We advise you to seek independent professional advice if you suspect your company is, or is about to become, insolvent.

As a general rule, an authorised insolvency practitioner or other professional will be appointed to manage a company’s affairs when insolvency proceedings are initiated.

The relevant legislation can be found in the:

- Companies Act 2006;
- Insolvency Act 1986 (as amended);
- Insolvency Rules 1986 (as amended);
- Council Regulation (EC) No 1346/2000, and
- Enterprise Act 2002.

The winding up, voluntary liquidation, insolvency, cessation of payments and similar procedures that apply to a PLC also apply to a European company, ‘Societas Europaea’ (SE) registered in GB. For general information on SEs, please see our guidance on ‘The European Company: Societas Europaea (SE)’.

## Chapter 1 General information

### 1. What are insolvency proceedings?

These are formal measures taken to deal with company debt. There are many different types of company insolvency proceedings. All are covered in this guidance.

**Please note:** The initiation or termination of insolvency procedures involving a European company (SE), or any decision to continue operating the SE, must be notified to Companies House on Form SE WU01. This is in addition to the other requirements mentioned in this guide. For more information about SEs, please see our guidance on 'The European Company: Societas Europaea (SE)'.

### 2. Do insolvency proceedings apply to all types of companies?

The parts of this guide covering compulsory winding-up and receivers (including administrative receivers) apply to registered and unregistered companies (including overseas companies).

The parts of this guide covering voluntary winding-up and administration do not apply to unregistered companies, which cannot be wound up by these methods.

If the liquidation or receivership began before 29 December 1986, then the law in force at that time will continue to apply.

**Remember:** Not all companies in liquidation are insolvent.

### 3. Do all companies have to go through insolvency proceedings before being dissolved?

No. If the Registrar has reason to believe that a company is not carrying on business or is not in operation, its name may be struck off the register and dissolved without going through liquidation. A private company that is not trading may apply to the Registrar to be struck off the register. **This procedure is not an alternative to formal insolvency proceedings.**

More information about striking off and dissolution of a company is available in our guidance on 'Strike-off, Dissolution and Restoration'.

### 4. Can anyone supervise insolvency procedures?

All liquidators, administrators, administrative receivers and supervisors taking office on or after 29 December 1986 must be authorised insolvency practitioners.

Receiver managers, Law of Property Act (LPA) receivers and nominees appointed to manage a corporate voluntary arrangement moratorium do not have to be authorised.

Insolvency practitioners may be authorised by:

- the Chartered Association of Certified Accountants;
- the Insolvency Practitioners' Association;
- the Institute of Chartered Accountants in England and Wales;
- the Institute of Chartered Accountants in Ireland;
- the Institute of Chartered Accountants of Scotland;
- the Law Society;
- the Law Society of Scotland; or
- the Secretary of State for Business, Innovation & Skills.

## **5. What happens to the directors of an insolvent company?**

The liquidator, administrative receiver, administrator or Official Receiver has a duty to send the Secretary of State for Business, Innovation & Skills, a report on the conduct of all directors who were in office in the last 3 years of the company's trading. The Secretary of State has to decide whether it is in the public interest to seek a disqualification order against a director.

Examples of the most commonly reported conduct are:

- continuing the company's trading when the company was insolvent;
- failing to keep proper accounting records;
- failing to prepare and file accounts or make returns to Companies House; and
- failing to send in returns or pay to the Crown any tax that is due.

## **Chapter 2**

### **Corporate voluntary arrangements (CVA) including CVA moratoria**

#### **1. What is a corporate voluntary arrangement?**

A corporate voluntary arrangement is when a company makes an agreement with its creditors by proposing a 'composition in satisfaction of its debt' or a 'scheme of arrangement of its affairs'. This means an arrangement, approved by the court, in which the company has formally agreed terms with its creditors for the settlement of its debts.

## **2. Who may propose a corporate voluntary arrangement?**

A corporate voluntary arrangement may be proposed by:

- the administrator, if there is an administration order;
- the liquidator, if the company is being wound up; or
- the directors, in other circumstances.

## **3. Who considers the proposal?**

When the directors have proposed the arrangement, the nominee appointed to supervise its implementation reports to the court within 28 days on whether, in his or her opinion, meetings of the company and of its creditors should be called.

## **4. How is a proposed corporate voluntary arrangement approved?**

The meetings summoned by the nominee decide whether to approve the arrangement which, subject to certain restrictions, may be approved with or without modifications. It is then binding on all creditors who had notice of the meeting and were entitled to vote. All creditors who had notice of the meeting are bound by the terms of the arrangement.

## **5. What happens when the corporate voluntary arrangement is approved?**

If the meetings of members and creditors approve the arrangement, then the nominee or his replacement becomes the supervisor of the arrangement.

## **6. What needs to be sent to Companies House?**

The supervisor must send a copy of the chairman's report of the meeting.

At least once every 12 months, the supervisor must send a report on the progress and prospects for the full implementation of the voluntary arrangement, to all interested parties including the Registrar. When the arrangement is completed, the supervisor must notify the Registrar within 28 days after final completion or termination of the voluntary arrangement.

If the arrangement is suspended or revoked, the Registrar must be notified.

Following the implementation of the Insolvency (Amendment) Rules 2010, which came into force on 6 April 2010, Companies House will prescribe the following Insolvency forms within Registrar's Rules for the first time. The forms listed below are to be filed with the Registrar, for all corporate voluntary arrangements. For any arrangement that started on or before 5 April 2010 these forms are to be used with appropriate amendments (if required):

<b>Form title</b>	<b>Number</b>
Notice to registrar of companies of voluntary arrangement taking effect	1.1
Notice to registrar of companies of order of revocation or suspension of voluntary arrangement	1.2
Notice to registrar of companies of supervisor's progress report	1.3
Notice to registrar of companies of completion or termination of voluntary arrangement	1.4

**Please note:** These forms are not available to download from Companies House but images of the documents can be viewed within Registrars Rules. Copies can be obtained from company law stationers.

## 7. Corporate voluntary arrangement moratorium

The Insolvency Act 2000 introduced the option of a moratorium into the existing voluntary arrangement procedures.

The courts decide whether a company is eligible for a moratorium. The moratorium will normally last for a period of 28 days and will be managed by a nominee, who may or may not be a registered insolvency practitioner.

At the end of a moratorium a company may (or may not) proceed to a corporate voluntary arrangement.

Following the implementation of the Insolvency (Amendment) Rules 2010, which came into force on 6 April 2010, Companies House will prescribe the following Insolvency forms within Registrar's Rules for the first time. The forms listed below are to be filed with the Registrar, for all corporate voluntary arrangement moratoriums. For any moratoria that started on or before 5 April 2010 these forms are to be used with appropriate amendments (if required):

<b>Form title</b>	<b>Number</b>
Notice to registrar of companies of commencement of moratorium	1.11
Notice to registrar of companies of extension or renewal or continuation of moratorium	1.12
Notice to registrar of companies of ending of moratorium	1.14
Notice to registrar of companies of the withdrawal of nominee's consent to act	1.16
Notice to registrar of companies of the appointment of a replacement nominee	1.18

**Please note:** These forms are not available to download from Companies House but images of the documents can be viewed within Registrars Rules. Copies can be obtained from company law stationers

## **Chapter 3**

### **'In administration' and 'administration orders'**

The current law concerning administration was introduced with effect from 15 September 2003. Under this regime, a company will usually be described as being 'in administration' – under the old regime a company would be described as subject to an 'administration order'.

What follows is a brief outline of the process of administration: it is not a complete statement of the law.

#### **1. What is 'in administration'?**

In administration is when a person, 'the administrator', is appointed to manage a company's affairs, business and property for the benefit of the creditors. The person appointed must be an insolvency practitioner and has the status of an officer of the court (whether or not he or she is appointed by the court).

The objective of administration is to:

- (a) rescue a company as a going concern;
- (b) achieve a better price for the company's assets or otherwise realise their value more favourably for the creditors as a whole than would be likely if the company were wound up (without first being in administration); or
- (c) in certain circumstances, realise the value of property in order to make a distribution to one or more preferential creditors.

#### **2. How does a company enter administration?**

A company enters administration when the appointment of an administrator takes effect. An administrator may be appointed by:

- (a) an administration order made by the court;
- (b) the holder of a floating charge, or
- (c) the company or its directors.

The administrator must perform his or her functions as quickly and efficiently as reasonably practicable.

#### **3. What are the effects on a company of being in administration?**

When a company enters administration:

- any pending winding-up petitions will be dismissed or suspended;

- there will be a moratorium on insolvency and other legal proceedings;
- if an administrative receiver has been appointed, he must vacate office;
- if a receiver of part of the company's property has been appointed, he must vacate office (if the administrator requires this).

#### **4. Who must be told that a company is in administration?**

As soon as reasonably practicable, an administrator must send a notice of his or her appointment to the company and each of its creditors and publish notice of his or her appointment in the Gazette and in a newspaper in the area where the company has its principal place of business.

##### **What is the Gazette?**

The Gazette is the official newspaper of record which contains various statutory notices and advertisements. It is published daily. References to the Gazette are to the London Gazette in respect of companies registered in England and Wales.

Notices placed by the Registrar of Companies in England and Wales are included in the Company Law Official Notifications Supplement to the London Gazette which is published on microfiche. You may see copies at the Companies House search rooms in Cardiff and London. Some of the larger public libraries also have copies. Visit the Gazette for more information.

The administrator must send a notice of his or her appointment to the Registrar.

While a company is in administration, every business document issued by or on behalf of the company or the administrator must state the name of the administrator and that he or she is managing the affairs, business and property of the company.

#### **5. What does the process of administration involve?**

The administrator will request a statement of the company's affairs from relevant people (e.g. an officer or employee of the company).

As soon as practicable and before the end of eight weeks after the company enters administration, the administrator must make a statement setting out proposals for achieving the purpose of the administration or explaining why they cannot be achieved. The proposals may include a voluntary arrangement or a compromise or arrangement with creditors or members.

The statement setting out the proposals must be sent to:

- The Registrar of Companies.
- every creditor of the company whose claim and address he is aware; and

- every member of the company whose address he is aware.

Each copy of the proposals sent must be accompanied by an invitation to a creditors meeting. The business of the initial creditors' meeting will be to approve (with or without modifications) the statement of proposals. Following the initial meeting, the administrator may

- hold further creditors' meetings;
- form a creditors committee; or
- deal with matters in correspondence between the administrator and creditors.

The Administrator must notify any revisions to the proposals following the creditors' meeting to members.

Any decisions taken at creditors' meetings must be reported to the Registrar of Companies.

## **6. When does administration end?**

There are several ways in which administration can come to an end.

Administration can end automatically when the administrator's term of office expires. The appointment of an administrator expires after 1 year. However, this may be extended with the consent of creditors or the court. Any extension must be notified to the Registrar.

An administrator appointed under a court order may apply to the court to end administration if he or she thinks that the purpose of the administration cannot be achieved or the company should not have entered administration, or a creditors' meeting requires the application. The court will discharge the administration order and the administrator must notify the Registrar.

An administrator appointed by the holders of a floating charge or by the company or its directors may end administration when the purpose of administration has been sufficiently achieved. The administrator must file the notice with the court and with the Registrar.

Administration may end on the application of a creditor to the court alleging an improper motive on the part of the person who appointed the administrator or applied to the court for an administration order. The administrator must send a copy of the order with the relevant form to the Registrar.

Administration may end and move into a creditors' voluntary winding up. This can happen where the administrator thinks that each secured creditor is likely to be paid and a distribution will be made to unsecured creditors, if there are any. The administrator must notify the Registrar and the company will be wound up as if a resolution for

voluntary winding up had been passed, on the day on which notice is **registered** with the Registrar.

Administration may end and move into dissolution. This can happen if the administrator thinks that a company has no property with which to make a distribution to its creditors. The administrator must send notice of this to the Registrar and the company will be dissolved 3 months after the date the form is registered.

Dissolution will occur after the three month period unless an order is made to extend or suspend the period, or stop the dissolution. Notice of the order must be notified to the Registrar.

## 7. Which forms should be used?

Following the implementation of the Insolvency (Amendment) Rules 2010, which came into force on 6 April 2010, Companies House will prescribe the following Insolvency forms within Registrar's Rules for the first time. The forms listed below are to be filed with the Registrar, for all in administrations. For any in administration that started on or before 5 April 2010 these forms are to be used with appropriate amendments (if required):

<b>Form title</b>	<b>Number</b>
Notice of administrator's appointment	2.12B(CH)
Notice of statement of affairs	2.16B
Statement of administrator's proposals	2.17B
Notice of extension of time period	2.18B(CH)
Notice of deemed approval of proposals	F2.18
Statement of administrators revised proposals	2.22B(CH)
Notice of result of meeting of creditors	2.23B(CH)
Administrators progress report	2.24B
[Amended] certificate of constitution of creditor's committee	2.26B(CH)
Notice of order to deal with charged property	2.28B
Notice of automatic end of administration	2.30B(CH)
Notice of extension of period of administration	2.31B
Notice of end of administration	2.32B(CH)
Notice of court order ending administration	2.33B
Notice of move from administration to creditors voluntary liquidation	2.34B
Notice of move from administration to dissolution	2.35B
Notice to registrar of companies in respect of date of dissolution	2.36B
Notice of intention to resign as administrator	2.37B
Notice of resignation by administrator	2.38B(CH)
Notice of vacation of office by administrator	2.39B
Notice of appointment of replacement/additional administrator	2.40B

**Please note:** These forms are not available to download from Companies House but images of the documents can be viewed within Registrars Rules. Copies can be obtained from company law stationers.

## Chapter 4 Receivers

### 1. What is a receiver?

There are many different kinds of receiver and their powers vary according to the terms of their appointment.

An administrative receiver is a receiver or manager of the whole, or substantially the whole, of a company's property who is appointed by or on behalf of the holders of any debentures of the company secured by a floating charge. He or she has the power to sell (or otherwise realise) the assets covered by the floating charge and apply the proceeds to the debt owed to the charge-holder.

Receivers who are not administrative receivers may be appointed in other circumstances. For example, under powers contained in an instrument or document creating a charge over a company's property, a receiver or manager may be appointed until the debt is recovered. Receivers may also be appointed under the Law of Property Act 1925.

### 2. Who gives notice of the receiver's appointment?

The person who appoints the administrative receiver, receiver or manager, or has them appointed under the powers contained in an instrument, is responsible for informing the Registrar within 7 days of the appointment. A Form LQ01 is required for each separate charge registered at Companies House over which the Receiver is appointed, whether the appointment is over part of the property or all the company's assets. An administrative receiver must also publish notice of his or her appointment in the Gazette and in an appropriate newspaper.

When the administrative receiver, receiver or manager ceases to act they must notify the Registrar with a Form LQ02

**Please Note:** Separate Forms LQ01 and LQ02 must be filed for each separate charge registered at Companies House over which a receiver is appointed and/or ceases to act, whether the appointment is over part of the property or all the company's assets.

### 3. What must the receiver send to Companies House?

Within 3 months of appointment, an administrative receiver must make a report to:

- the Registrar;
- the company's creditors;
- the holders of a floating charge; and
- any trustees for secured creditors of the company.

The report must explain the circumstances of the appointment and the action the administrative receiver is taking.

The report must also include a summary of any 'statement of affairs' prepared for the receiver by the officers or employees of the company.

### **Statement of affairs**

This is a summary of the company's assets, liabilities and creditors. The administrative receiver decides whether it is required and who should prepare it.

All receivers must send an account of receipts and payments for the first 12 months of receivership to the Registrar, and:

- for administrative receivers, at 12-monthly intervals thereafter;
- for receivers and managers, at 6-monthly intervals thereafter.

### **4. Which forms should be used?**

Following the implementation of the Insolvency (Amendment) Rules 2010, which came into force on 6 April 2010, Companies House will prescribe the following Insolvency forms within Registrar's Rules, some for the first time. The forms listed below are to be filed with the Registrar, for all receiverships.

<b><i>Form title</i></b>	<b><i>Number</i></b>
Notice of the appointment of receiver or manager	LQ01
Notice of ceasing to act as receiver or manager	LQ02
Statement of affairs in administrative receivership following report to creditors	3.3
Certificate of constitution (amended certificate) of creditors' committee	3.4
Administrative receiver's report as to change in membership of creditors' committee	3.5
Receiver or manager or administrative receiver's abstract of receipts and payments	3.6
Notice of administrative receivers death	3.7
Notice of order to dispose of charged property	3.8
Administrative receiver's report	3.10

**Please note:** With the exception of Forms LQ01 and LQ02 these forms are not available to download from Companies House but copies can be viewed within Registrar's Rules. Copies can be obtained from company law stationers

## **Chapter 5**

### **Voluntary liquidation**

There are two kinds of voluntary liquidation:

- members' voluntary liquidation (MVL) - which means the directors have made a statutory declaration of solvency;
- creditors' voluntary liquidation (CVL) - which means that the directors have not made such a declaration.

#### **1. When can a company go into MVL?**

This can take place when the directors of a company believe that the company is solvent.

A majority of the company's directors must make a statutory declaration of solvency in the 5 weeks before a resolution to wind up the company is passed.

#### **2. What is in the declaration?**

The statutory declaration will state that the directors have made a full inquiry into the company's affairs and that, having done so, they believe that the company will be able to pay its debts in full within 12 months from the start of the winding-up. The declaration will include a statement of the company's assets and liabilities as at the latest practicable date before making the declaration.

#### **3. When does liquidation actually start?**

The liquidation starts when the members, in general meeting, pass a resolution (Companies Act 2006) (usually a special resolution) to wind up the company voluntarily.

#### **4. Must notice of voluntary liquidation be given to anyone?**

Yes. Notice of the special resolution for voluntary winding-up of the company must be published in the Gazette within 14 days of the general meeting. The company must also send a copy of the declaration and the special resolution to the Registrar within 15 days of the general meeting.

#### **5. When may a CVL be appropriate?**

A company may go into CVL when it cannot pay its debts.

#### **6. What must the company do?**

The company passes a special resolution (Companies Act 2006) to say that it cannot continue in business because of its liabilities and that it is advisable to wind up.

The resolution must be:

- advertised in the Gazette within 14 days; and
- sent to the Registrar within 15 days.

A meeting of creditors must be held in the next 14 days after passing the resolution. Notice of the meeting must be sent to the creditors at least 7 days before the meeting. Also, the directors must prepare a statement of affairs for consideration at the meeting, and appoint one of themselves to attend and preside over the meeting.

When the liquidator is appointed, the directors must provide him or her with a statement of affairs and otherwise co-operate with the liquidator.

### **7. Does the company have to advertise notice of the meeting?**

Yes. The meeting must be advertised in the Gazette and in two newspapers in the area where the company has its principal place of business.

### **8. What are the main duties of a liquidator?**

The liquidator is appointed to wind up the company's affairs. The liquidator does this by calling in all the company's assets and distributing them to its creditors. If anything is left over, the liquidator distributes it among the members of the company.

### **9. Does a liquidator need to notify anyone of his or her appointment?**

Yes. Within 14 days of being appointed, a liquidator must publish a notice of appointment in the Gazette and notify the Registrar.

If the liquidation is voluntary, the liquidator may also give notice in such other manner as the liquidator thinks fit.

### **10. What does the liquidator have to send to Companies House?**

The liquidator must send a statement of affairs with the relevant Form to the Registrar within 5 business days of the creditors' meeting.

If the voluntary liquidation commenced on or before the 5 April 2010, the liquidator must also send a statement of receipts and payments for the first 12 months of liquidation. After that, statements must be sent every 6 months until the winding-up is complete.

If the voluntary liquidation commenced on or after the 6 April 2010, the liquidator must send a liquidator's report for the first 12 months of liquidation. After that a liquidator's report must be sent every 12 months until the winding-up is complete.

## **11. Can an MVL be converted into a CVL?**

Yes. If the liquidator decides that the company will not be able to pay its debts in full in the period stated in the directors' statutory declaration of solvency, they must call a meeting of the creditors which must be held within 28 days. The liquidation becomes a CVL from the date of the meeting.

## **12. What are the requirements for giving notice in such a case?**

The liquidator must:

- post a notice of the meeting to each creditor at least 7 days before the date of the meeting;
- advertise the date of the meeting in the Gazette and in 2 newspapers in the area where the company has its principal place of business; and
- prepare a statement of affairs for consideration at the meeting. A copy of the statement must be sent to the Registrar within 5 business days of the meeting.

## **13. What happens when the company's affairs are fully wound up?**

For voluntary liquidations that started on or before 5 April 2010, the liquidator presents an account to a final meeting of creditors and members of the company. He or she must advertise the meetings in the Gazette at least one month before.

Within one week of the meeting having taken place, the liquidator must send the account to the Registrar in the form of a return of final meeting.

For voluntary liquidations that started on or after 6 April 2010, the liquidator presents a full progress report to a final meeting of creditors and members of the company. He advertises the meetings in the Gazette at least one month before.

Within one week of the meeting having taken place, the liquidator must send the final progress report to the Registrar attached to a return of final meeting form.

Unless the court makes an order deferring the dissolution of the company, it is dissolved 3 months after the return and account are registered at Companies House.

## **14. Which forms should be used?**

Following the implementation of the Insolvency (Amendment) Rules 2010, which came into force on 6 April 2010, Companies House will prescribe the following Insolvency forms within Registrar's Rules, some for the first time. The forms listed below are to be filed with the Registrar, for all voluntary liquidations. For any voluntary liquidation that started on or before 5 April 2010 these forms are to be used with appropriate amendments (if required):

<b>Form title</b>	<b>Number</b>
Notice of appointment of liquidator voluntary winding-up (members or creditors)	600
Statement of affairs in conversion from a members' voluntary to a creditors' voluntary liquidation	4.18 & 4.20
Statement of affairs in a creditors' voluntary liquidation	4.19 & 4.20
Notice of resignation as voluntary liquidator under s171(5) of Insolvency Act 1986	4.33
Order of Court granting voluntary liquidator leave to resign	4.35
Certificate of removal of voluntary liquidator	4.38
Notice of ceasing to act as voluntary liquidator	4.40
Notice of death of voluntary liquidator	4.44
Notice of vacation of office by voluntary liquidator	4.46
Notice of constitution of liquidation committee	4.48
Certificate that creditors have been paid in full	4.51
Liquidator's statement of receipts and payments	4.68
Members' voluntary winding-up declaration of solvency embodying a statement of assets and liabilities	4.70
Return of final meeting in a members' voluntary winding-up	4.71
Return of final meeting in a creditors' voluntary winding-up	4.72

**Please note:** With the exception of Form 600, these forms are not available to download from Companies House but copies can be viewed within Registrar's Rules. Copies can be obtained from company law stationers

## **Chapter 6 Compulsory liquidation**

### **1. What is 'compulsory liquidation'?**

Compulsory liquidation of a company is when the company is ordered by a court to be wound up.

### **2. Which courts can order a compulsory liquidation?**

The High Court, or a county court with the appropriate jurisdiction, may order the winding-up of a company. This may be, for example, on the petition of a creditor or creditors on the grounds that the company cannot pay its debts.

A company is regarded as unable to pay its debts if, for example, a creditor:

- is owed more than £750;
- presents a written demand in the prescribed form (known as a statutory

demand) to the company; and

- the company fails to pay, secure or agree a settlement of the debt to the creditor's reasonable satisfaction.

There are other situations where a company is deemed unable to pay its debts. Please read the relevant legislation.

The court may also order the company to be wound up on the petition of:

- the company itself;
- the company's directors or one or more members;
- the Secretary of State for Business, Innovation and Skills;
- the Financial Services Authority (formerly the Securities and Investment Board);  
or
- the Official Receiver.

In the case of a European company (SE) registered in GB, the Secretary of State may petition the Court for a winding up order on the grounds that it appears that the SE does not have both its head office and registered office in GB. For more information on SEs, please see our guidance on 'The European Company: Societas Europaea (SE)'.

### **3. Must the petition be advertised?**

Unless the court directs other arrangements, the petition must be advertised in the Gazette.

### **4. What appears on the company record held by Companies House?**

If the petition is successful, the official receiver will forward a copy of the winding-up order to the Registrar and it will be placed on the company's public record.

The petition is not presented to the Registrar and it does not appear on the public record.

### **5. Who acts as the liquidator when an order is made to wind up the company?**

The Official Receiver becomes liquidator on the making of a winding-up order against a company, unless the court orders otherwise.

### **6. What are the duties of the Official Receiver as liquidator?**

The Official Receiver has a duty to investigate the company's affairs and the causes of its failure.

He also decides whether to call meetings of the creditors and contributories (that is, those people liable to contribute to the assets of the company if it is wound up) for the purpose of appointing a liquidator in his place.

If he decides not to call meetings, he must notify the creditors, contributories and the court of his decision.

On the other hand, if he decides to call meetings, a liquidator may then be appointed in place of the Official Receiver. The liquidator must notify the Registrar of his or her appointment as soon as reasonably practicable.

If the position of liquidator becomes vacant at any time, the Official Receiver becomes the liquidator for the duration of the vacancy.

## **7. What happens when the winding-up is complete?**

When the Registrar receives notice from the liquidator of the final meeting of creditors or notice from the Official Receiver that winding-up is complete, the Registrar will register it and publish its receipt in the Gazette.

Unless the Secretary of State directs otherwise, the company will be dissolved 3 months after the notice was registered at Companies House.

If the Official Receiver, acting as liquidator, is satisfied that the company's realisable assets (that is, assets which could be sold or disposed of to raise money) will not cover the expenses of winding-up and that no further investigation of the company's affairs is necessary, he may apply to the Registrar for early dissolution of the company. The company will be dissolved 3 months after the application is registered at Companies House.

## **Chapter 7 European cross-border insolvency proceedings**

Council Regulation (EC) No.1346/2000 became effective on 31 May 2002. The Regulation is directly applicable and an integral part of each member state's law (except Denmark where parallel legislation will apply). To implement the Regulation in the UK, it was necessary to make some limited changes to the Insolvency Act 1986 and the Insolvency Rules.

### **1. What is the effect of the Regulation?**

The Regulation restricts where insolvency proceedings can be opened to the country where the debtor has his "centre of main interests". It requires insolvency proceedings opened under the Regulation to be recognised, and liquidators to be able to exercise their powers, in all member states.

The relevant company insolvency proceedings covered by the Regulation in the UK are:

- Winding up by or subject to the supervision of the court;
- Creditors' voluntary winding up (with confirmation by the court);

- Administration; and
- Corporate voluntary arrangements under insolvency legislation.

The Regulation does not apply to receiverships – administrative or otherwise – nor to members' voluntary winding up or to winding-up orders.

As a result of the regulations a number of statutory forms (relating primarily to the opening of insolvency proceedings) have been amended and one new form (Form 7.20 Confirmation by Court of Creditors' Voluntary Winding Up) has been introduced.

## **2. Companies incorporated in Great Britain**

Insolvency proceedings opened in this country will continue as normal. However, insolvency proceedings may be opened in another EU Member State if the company has its centre of main interests there.

The public records of companies registered in England and Wales will show insolvency proceedings opened in another Member State of the EU.

This will be the only indication that there are insolvency proceedings taking place abroad – the 'L' (for liquidation) marker will not appear against the company name on the Registrar's index of company names.

## **3. Companies incorporated in other EU member states**

Insolvency proceedings may be opened in the UK and be governed by UK law if the company has its centre of main interests here. Alternatively, insolvency proceedings may be opened in another Member State.

The public records of EU companies that have registered a place of business or branch within England and Wales will show insolvency proceedings opened in another Member State of the EU. This will be the only indication that there are insolvency proceedings taking place abroad – the 'L' (for Liquidation) marker will not appear against the company name on the Registrar's index of company names.

EU companies that have not registered a place of business or branch within England and Wales can submit details of insolvency proceedings opened in another Member State of the EU. These documents may be searched on the Register of EC Insolvency Orders by contacting Companies House on 0303 1234 500

## **4. Where can I obtain copies of the relevant legislation and get further information?**

Copies of the Council Regulation and relevant UK Statutory Instruments are available on the Insolvency Service website.

Enquiries about the Regulation should be forwarded to the Insolvency Service Policy Unit or telephone 020 7291 6740

## **Chapter 8**

### **Frequently Asked Questions**

Liquidation and other insolvency procedures can be lengthy and complex. This guide cannot answer every query but these are some of the most frequently asked questions.

#### **1. Do I need to send the Court Order appointing a provisional liquidator to Companies House?**

In order to notify the registrar of an appointment of provisional liquidator the court order must be sent to the registrar of companies with a Form 4.15A.

#### **2. Can I register a notice terminating the appointment of a provisional liquidator?**

Yes. Unless the termination is on the making of a wind up order or as the court otherwise directs, notification of the termination of the provisional liquidator must be sent to the registrar as soon as reasonably practicable on a Form F4.39. This form is not available to download from Companies House but a copy can be viewed within Registrar's Rules. Copies can be obtained from Law Stationers.

#### **3. How do I defer the date of dissolution of a company that was subject to liquidation proceedings?**

When the Registrar receives the liquidator's final documentation under sections 201 and 205 of the Insolvency Act 1986, it must be registered straightaway. After a period of approximately three months, the company is dissolved. However, it may be possible to defer the date at which the dissolution is to take effect.

In order to do so, the Registrar must receive either a direction to defer from the Secretary of State (in compulsory liquidation cases – s.205) or an order of court to defer (in voluntary cases – s.201). You should immediately apply for whichever is appropriate. Please note that whilst it may be possible to extend the deferment period by making a further application, it is not possible to shorten it. You should, therefore, select the period of the deferment with care.

We must receive the document in time to allow us to examine and register it before the company is dissolved.

#### **3. Do the directors of a company subject to a liquidation need to file annual accounts and annual returns (Forms AR01)?**

Once a company goes into liquidation and the statutory liquidation documents are registered at Companies House, there is no need to file annual accounts and annual returns. However, until Companies House receives notification that the liquidation has commenced the annual accounts and annual returns will still be deemed to be due.

If the company comes out of Liquidation, via a court order to sist (see below) and is returned to the live companies register then annual accounts and annual returns should then be filed up to date. Failure to comply could result in the company being struck off the register.

Any other queries relating to filing annual accounts and annual returns should be referred to Compliance Section at Companies House by contacting Companies House on 0303 1234 500.

#### **4. Will Companies House accept notification of the resignation of a director (Form TM01) once a company has gone into liquidation?**

Companies House will accept correctly completed forms TM01 relating to the resignation of directors even if the company has gone into liquidation.

Any other queries relating to filing Forms TM01 should be referred to the contact centre at Companies House by contacting Companies House on 0303 1234 500.

#### **5. What happens when I file an Order to stay a liquidation?**

The Court may make an Order staying, or sisting (meaning, stopping) winding up proceedings, either altogether or for a limited period of time, pursuant to Section 112 and Section 147 of the Insolvency Act 1986.

The Order is to be sent to the Registrar for entry onto the records relating to the company.

The Registrar records the Order onto the public records in the following ways:

- (i) The Order itself is placed on the public record for the company. It is listed as a 'miscellaneous' document on the list of documents received by the Registrar.
- (ii) The Liquidation status flag is removed from the company's public record. A searcher will still be able to obtain a copy of the winding up order. In addition, the insolvency details can still be obtained from the insolvency section of the electronic search products.
- (iii) Once the stay Order has been recorded, any outstanding accounts and annual returns must be filed, as for any other live and active company. Failure to comply may result in the company being struck off the register.

#### **6. My central heating has sprung a leak. The company is now in liquidation. Is my guarantee still valid?**

Companies House is unable to answer this query. Please contact the liquidator.

#### **7. How can I find out the name of the liquidator of a certain company?**

This information is provided free on the Companies House website or by calling 0303 1234 500.

## **Chapter 9 Quality of documents**

### **1. What happens to documents sent to Companies House?**

The documents and forms delivered to Companies House are scanned to produce an electronic image. The original documents are then stored, and the electronic image is used as the working document.

When your business contacts view the company record, they see the electronic image reproduced on-line. So it is important not only that the original is legible, but that it can also produce a clear copy.

## **Chapter 10 Further information**

### **1. Where can I go for help?**

Staff at Companies House in Cardiff will be able to advise you on matters specifically related to filing insolvency documentation with the registrar. However if you are considering some form of insolvency proceedings you should seek the advice of an insolvency practitioner.

Complaints about the conduct of a licensed insolvency practitioner should be sent, in writing, to:

The Insolvency Practitioners' Section  
The Insolvency Service  
Area 1.10  
PO Box 203  
21 Bloomsbury Street  
London  
WC1B 3QW

They will then forward the complaint to the practitioner's authorising body.

### **2. Where do I get forms and guidance?**

This is one of a series of Companies House guidance which provide a simple guide to the Companies Act.

The following forms (mentioned in this guide) are available to download from Companies House.

- LQ01 notice of appointment of receiver or manager;

- LQ02 notice of ceasing to act as receiver or manager;
- 600 notice of appointment of liquidator voluntary winding up (members or creditors); and

SE WU01 notice of initiation or termination of winding-up, liquidation, insolvency, cessation of payment procedures and decision to continue operating of Societas Europaea (SE).

List of Companies House forms available for download

All the other insolvency forms mentioned in this guide can be obtained from company law stationers or copies can be viewed within Registrar's Rules. A list of company law stationers can usually be found in 'Yellow Pages'.

All statutory forms and guides are available, free of charge from Companies House. The quickest way to get them is through our website or by telephoning 0303 1234 500.

### 3. How do I send information to the Registrar?

- Documents, including court orders, should display the correct company name and registration number, where appropriate.
- Companies House will only acknowledge receipt if you provide a stamped addressed envelope.
- You should supply documents in portrait format (that is, with the shorter edge across the top)

Documents may be delivered by hand (personally or by courier), including outside office hours, bank holidays and weekends to Cardiff or London.

You may also send documents by post or by the Document Exchange Service.

If you send insolvency documents, you should address them to:

The Liquidation Department  
Companies House  
Crown Way  
Cardiff CF14 3UZ

DX33050 Cardiff 1

**Please note: Companies House does not accept accounts or any other statutory documents by fax.**

# how to contact us

Version 3.2 (12/11)

contact centre: **0303 1234 500**

(For training and quality purposes your call may be monitored)

mini-com: 029 2038 1245

enquiries@companieshouse.gov.uk

**www.companieshouse.gov.uk**

- Cardiff:** Companies House  
Crown Way, Cardiff CF14 3UZ
- Edinburgh:** Companies House  
Fourth Floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, EH3 9FF
- London:** Companies House  
21 Bloomsbury Street, London, WC1B 3XD
- Belfast:** Companies House,  
Second Floor, The Linenhall,  
32-38 Linenhall Street, Belfast, BT2 8BG

For the most up to date version of this booklet please visit our website at:

**www.companieshouse.gov.uk**



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