



# Liquidations, Receiverships & Examinerships

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## 1. Receiverships

A receiver is appointed to property of a company. A receiver realises and receives its asset(s) and/or is managing its affairs in the hope that debts outstanding to the debenture holder, which appointed him/her can be met.

A receiver may be any person who is neither a body corporate nor an undischarged bankrupt. He/she may be appointed by the Court or out of court to act as receiver of the property of a company. He/she will apply its benefits, rights, interests as directed and will account for his/her receipts and payments during the period of his/her appointment. The duties of a receiver are normally set out in the instrument under the terms of which he/she is appointed and are also set out in Part 8 of the Companies Act 2014.

### **Statutory requirements**

A notice of appointment of receiver, Form E8, must be filed with the CRO within seven days of appointment and must also be published in Iris Oifigiuil.

Once a receiver is appointed all invoices, orders for goods and business letters issued by or on behalf of the company must contain a notice to that effect.

Where a receiver is appointed on behalf of debenture holders, who are secured by a floating charge, a statement of the company's affairs (Form E10) must be submitted to the receiver who must file a copy of same with the CRO.

The receiver must file abstracts of his/her receipts and payments on Form E9, for each six-month period from the date of his/her appointment and any lesser final period up to the date he/she ceases to act.

### **Cessation**

A notice of cessation is filed on form E11. Forms E9 must be completed up to the date of cessation. All receivership documents have a filing fee of €15.

Upon cessation, unless the company is already in liquidation, a statement by a receiver who is appointed over the whole of the property of the company, is required to be submitted. The statement under s.430 should assert whether, at the date of cessation, the company was solvent. This statement is then filed with the final receivers abstract. This statement is forwarded by the CRO to the Office of the Director of Corporate Enforcement.

### **Statement that company has a receiver appointed to its property**

Under section 429(1) where a receiver 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, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed. (Where a receiver of the property of a company has been appointed and a winding up of the company is taking place (whether that winding up has commenced before or after that appointment), in addition to the statement that the company has a receiver appointed over its property, shall also contain a statement that the company is being wound up.)

### **Website Information**

Where a receiver of the property of a company has been appointed, then any website of the company and any electronic mail sent to a third party by, or on behalf of, the company, shall contain a statement that a receiver has been appointed. Similarly if the company is in liquidation this should also be stated.

(Third party means a person other than an officer or employee of the company concerned, or a holding company or subsidiary of the company or an officer or employee of that holding company or subsidiary).

### **Disqualification for appointment as receiver.**

None of the following persons shall be qualified for appointment as receiver of the property of a company -

- an undischarged bankrupt;
- a person who is, or who has, within the period of 12 months before the date of commencement of

- the receivership been, an officer or servant of the company;
- a parent, spouse, civil partner, brother, sister or child of an officer of the company;
  - a person who is a partner of, or in the employment of, an officer or servant of the company;
  - a person who is not qualified by virtue of this subsection for appointment as receiver of the property of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company;
  - a body corporate.

The reference to a child of an officer of the company shall be deemed to include a child of the officer's civil partner where the child is ordinarily resident with the officer and the civil partner. An officer or servant of the company includes a statutory auditor.

#### **Vacating position as receiver**

If a receiver of the property of a company becomes disqualified, he or she shall thereupon vacate his or her office and give notice in writing within 14 days after the date of vacation to - the company, the Registrar and the debenture-holder, if the receiver was appointed by a debentureholder, or the court, if the receiver was appointed by the court - that he or she has vacated it by reason of such disqualification.

<b>Forms to be Filed</b>		<b>Filing Fee</b>	<b>Time for Delivery</b>	<b>Periods to be Covered</b>
E8	Notice of appointment of Receiver	€15.00	Within 7 days of appointment	
E9	Receivers abstract	€15.00	Within 30 days of period end.	Abstracts to be submitted every six months or any lesser period to end date.
E11	Notice of cessation of Receiver	€15.00	On ceasing to act	
E10	Statement of Affairs	€15.00	Within 2 months of receipt by receiver	Not applicable to all receiverships. (Only submitted for certain receiverships S.430).

## 2. Examinerships

A company which is in examinership is under scrutiny by an examiner so that he/she can report back to the High Court with proposals for the company's survival.

Examinership is a mechanism provided for the rescue and return to health of ailing, but potentially viable companies. The company has to have a reasonable prospect of survival. When considering whether to grant an application to place a company in examinership, the court will have more information available to it, in the form of an independent accountant's report. Creditors also have the right to be heard during the court hearing when the appointment of an examiner is being considered. However, a winding up of the company may not be in progress, voluntary or compulsory.

The court makes an order for the appointment of an examiner for the purpose of examining the state of the company's affairs and performing such duties in relation to the company as may be imposed by the Act. A petition to the Court for the appointment of an examiner may be presented by the company or its directors, a creditor or contingent or prospective creditor (including an employee) of the company, or by the members holding not less than one tenth of the paid-up capital.

Where the Court appoints an examiner to a company, it may at the same time, or at any time thereafter, make an order appointing the examiner to a related company. The duration of the protection of the Court is 70 days from the date of the presentation of the petition.

### Statutory requirements

A form E24 (notice of the petition to appoint an examiner) must be delivered to the CRO within three days after its presentation to the Court. The actual petition is not filed with the CRO. The examiner shall arrange for the particulars of his/her appointment including date of appointment to be published in *Iris Oifigiuil* and in at least two daily newspapers circulating in the district in which the registered office of the company is situated. A copy of the order to appoint the examiner must be filed with the registrar within three days.

It is a duty of the examiner to conduct an examination of the affairs of the company and report to the Court.

A court order to cease the protection of the court, to place the company in liquidation or to confirm the proposals needs to be filed with the CRO. Otherwise the status of the company would remain at Examinership and the individual would still appear on a company printout.

These orders and an order under section 533 (following a hearing regarding irregularities in relation to the company's affairs) - may, if the High Court considers it appropriate to do so, be delivered to the registrar of companies by the examiner or such other person as the Court may specify - an order under 541 re confirmation of proposals; an order under section 553 regarding revocation of order confirming proposals.

### Qualification of examiners.

A person shall not be qualified to be appointed or act as an examiner of a company unless he or she would be qualified to act as its liquidator (but disregarding for this purpose the requirements of section 634 concerning professional indemnity cover). A person who acts as examiner of a company when he or she is not qualified to do so shall be guilty of a category 2 offence. Please see section 4.1 Qualifications to act as Liquidator and section 4.2 Disqualifications to act as liquidator.

Documents to be Submitted		Filing Fee	Time for Delivery
E24	Notice of application for appointment of Examiner	€15.00	Within 3 days of presentation of petition
Court Order	Notice of appointment of interim examiner	€15.00	Within 3 days of appointment
Court Order	Notice of appointment of examiner	€15.00	Within 3 days of appointment
Court Order	Order to cease examinership or Order to approve scheme	€15.00	Forthwith

### 3. Winding Up

A company can be wound up by:

- resolution of the Members following the making of a declaration of solvency;
- resolution of the members ratified by the Creditors;
- an order of the Court.

Liquidation involves the dissolution of a company, where its affairs have been tidied up and assets realised and distributed to the owed parties. A liquidator is a person independent of the company.

In the majority of cases, a liquidator is appointed and is obliged to file accounts under the provisions of the Companies Act 2014. The company is dissolved with an effective date 3 months from the date of registration of the final documents in a voluntary wind up, or when the court orders its dissolution after winding up by a court appointed liquidator, on the date of receipt/registration of the said court order.

#### **Notification that a company is in liquidation**

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

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

Every invoice, order for goods or business letter issued by or on behalf of a company to which a provisional liquidator has been appointed, on behalf of a provisional liquidator of the company; or a receiver of the property of such a company, being a document –

- on or in which the name of the company appears; and
- issued during the period of office of the provisional liquidator as such provisional liquidator,

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

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

#### **Former Name**

Where the winding up of a company commences within one year after the date on which the company has changed its name in accordance with this Act, the former name as well as the existing name of the company shall appear on all notices and advertisements in relation to the winding up and in any website of the company and in any electronic mail sent to a third party<sup>1</sup> by, or on behalf of, it.

#### **Disposal of books and papers of company in winding up.**

When a company has been wound up and is about to be dissolved, the seal or seals, books and papers of the company and of the liquidator may be disposed of as follows -

- in the case of a members' voluntary winding up, in such way as the company by special resolution directs; and
- in the case of a winding up by the court or a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

However, in any of the foregoing cases and notwithstanding anything in a foregoing direction, such seal or seals, books and papers shall be retained by the liquidator for a period of at least 6 years after the date of the dissolution of the company and, in the absence of a foregoing direction as to their disposal, the liquidator may then dispose of them as he or she thinks fit.

<sup>1</sup> Third party means a person other than an officer or employee of the company concerned; or a holding company or subsidiary of the company or an officer or employee of that holding company or subsidiary.

### 3.1 Members Voluntary Winding Up

For members to voluntarily wind up their company as a Members Voluntary Winding Up, a declaration of solvency and special resolution must be submitted.

A majority of the directors must make a declaration that, having made a full enquiry into the affairs of the company, they are of the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months from the commencement of the winding up (on the form E1). Within one month of the making of the declaration of solvency, the members must pass a special resolution to wind up and appoint a liquidator. The resolution to wind up must be advertised in Iris Oifigiúil within 14 days after the passing of the resolution.

#### Statutory requirements - Forms to be submitted

Initially, the Declaration of Solvency (Form E1) must be submitted, a special resolution to wind up and appoint a liquidator (Form G1), and a Notice of appointment of liquidator (Form E2), must also be filed with the CRO. An E1-SAP form would be used for a declaration of solvency using section 207 of the Act.

Resolution to wind up must be a special resolution (Form G1) where the Summary Approval Procedure is being used. Under the section 580 Companies Act 2014 procedure, the resolution to wind up can be an ordinary resolution. The resolution to appoint a liquidator in either case can be an ordinary resolution passed in general meeting.

The section 580 of the Companies Act 2014 procedure relates only to companies which meet particular requirements - the company must be a fixed duration/event company. The procedure may be commenced on the expiry of the period that is fixed for the duration of a company by its constitution or should such happen, when the event occurs on the occurrence of which a company's constitution provides that the company is to be dissolved. E1(41) would be submitted where company is using section 580 of the Act as it is a statutory declaration.

Separate to CRO requirements, the company must ensure that advertisement of the liquidation is made in Iris Oifigiúil (section 581). Forms E1, E2, G1 and G2 have filing fees of €15 each.

#### Forms to be filed in a Members Voluntary Winding Up

Forms to be Filed	Description	Filing Fee	Time to be Delivered	Period to be Covered
G1/G2	Resolution	€15	Within 15 days of passing of resolution	
E1	Declaration of Solvency (either E1-SAP is used for s.207) or (E1-41 is used for s.580 procedure)	€15	Within 21 days using SAP s.207 procedure. Within 14 days if using s.580 procedure	
E2	Notice of appointment of liquidator	€15	Within 14 days of appointment	
E3	Liquidators account of his/her acts and dealings	€15	Within 7 days of presentation at meeting	12 month periods. Any lesser period to end of liquidation need not be covered.
E4	Liquidators s681 account	€15	Within 14 days of completion of period	First 12 months and thereafter every 6 months and also any lesser period to end date of liquidation
E5	Statement of account	€15	Within 7 days of meeting	
E6	Return of Final Meeting	€15	Within 7 days of meeting	

See Section 7 regarding how a declaration of solvency must be completed. It is very important to complete the Form E1 correctly as the company will have to go to the High Court for direction if the declaration is ineffective.

Form E3, liquidator's account of his/her dealings - is not required if the winding up continues for a period of less than 12 months. However, if the winding up continues for a longer period, a Form E3 must be filed for the first 12 months, and for every period, of exactly 12 months during the winding up. Any lesser period covering up to the date of the final meeting doesn't require the submission of an additional Form E3. Form E3 has a filing fee of €15.

It is the duty of the liquidator to summon, giving 7 days' notice thereof, the holding of a general meeting of the company for a day falling not later than 28 days after the anniversary of the passing of the resolution to wind up; and lay before that meeting an account of his or her acts and dealings and of the conduct of the winding up during the preceding year. The liquidator shall, within 7 days after the date of such meeting, send a copy of the foregoing account (form E3) to the Registrar.

Form E4, liquidator's section 681 accounts -is not required if the winding up continues for a period of less than 12 months. However, if the winding up continues for longer, Form E4 must be filed for the initial period of 12 months and each subsequent six-month period, and any lesser period, up to the date of the close of winding up (date of final meeting on Form E6). Form E4 has a filing fee of €15. The form E4 must be submitted within 14 days of the anniversary to the CRO.

Form E6, Return of the final winding up meeting must be accompanied by a full statement of account spanning the duration of the liquidation - Form E5. Forms E6 and E5 have filing fees of €15 each. The final meeting must be called with at least 28 days written notice given prior. There is no necessity to place an advertisement in a newspaper.

### **Dissolution**

3 months after the date of registration of the final documents - forms E6 and E5, the company is deemed to be dissolved. The dissolution can be voided within 2 years under section 708 of the Companies Act. A copy of the court order must be sent to the CRO (with the filing fee €15) and the status of the company is then returned to Liquidation. It is possible within the 3 months after the date of receipt/registration of the final forms for any interested party to apply for the dissolution to be deferred. Any order made should be submitted to the CRO and promptly, otherwise the company could be dissolved. A court order has a filing fee of €15.

### **3.1.2 Conversion of a Members Voluntary Winding up to a Creditors Voluntary Winding up.**

Under section 584 of the Companies Act 2014, it is necessary for the liquidator to notify others that the liquidation of the company and the circumstances therein have changed where the liquidator is of the opinion that the company is unable to pay its debts.

The liquidator then follows the procedure that would be used in a creditors winding up, principally, the liquidator summons a meeting of creditors for a day not later than the 14th day after the day on which he or she formed that opinion;

- would send notices of the creditors' meeting to the creditors by post not less than 10 days before the day on which that meeting is to be held;
- would cause notice of the creditors' meeting to be advertised, at least 10 days before the date of the meeting, once in *Iris Oifigiúil* and once at least in 2 daily newspapers circulating in the locality in which the company's principal place of business in the State was situated during the relevant period.

During the period before the day on which the creditors' meeting is to be held, the liquidator should furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require.

The liquidator shall also make out a statement as to the affairs of the company, including a statement of the company's assets and liabilities, a list of the outstanding creditors and the estimated amount of their claims, lay that statement before the creditors' meeting and attend and preside at that meeting.



## 3.2 Creditors Voluntary Winding Up

In a creditors' winding up the company is obliged to summon a meeting of the creditors. The creditors must receive at least ten days notice and their meeting must be held on the same day or the day after the meeting of the members at which the resolution for voluntary winding up is to be proposed.

### Statutory requirements

Notice of the meeting must be advertised at least ten days before the date of the meeting, in two daily newspapers circulating in the district of the registered office of the company. The creditors have the right to supervise the conduct of the liquidation. A committee of inspection may be appointed by the creditors at their meeting for this purpose.

The members and the creditors must be summoned to all meetings called by the liquidator.

Notice in writing of such meeting that is sent to the creditors shall -

- (a) state the date, time and location of the creditors' meeting;
- (b) state the name and address of the person at that time proposed for appointment as liquidator, if any; and
- (c) either - (i) attach a list of the creditors of the company; or  
(ii) notify the recipient of his or her rights together with details of the location at which the list of creditors of the company may be inspected.

The directors of the company shall -

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

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

### Forms to be filed with the CRO in a Creditors Voluntary Winding Up

Forms to be Filed	Description	Filing Fee	Time to be Delivered	Period to be Covered
G1/G2	Resolution	€15	Within 15 days of passing of resolution	Resolution to wind up and appoint liquidator required.
E2	Notice of appointment of liquidator	€15	Within 14 days of appointment	
E3	Liquidators account of his/her acts and dealings	€15	Within 7 days of presentation at meeting	12 month periods. Any lesser period to end of liquidation need not be covered.
E4	Liquidators s681 account	€15	Within 14 days of completion of period	First 12 months and thereafter every 6 months and also any lesser period to end date of liquidation
E5	Statement of account	€15	Within 7 days of meeting	
E7	Return of Final Meeting	€15	Within 7 days of meeting	

Separate to CRO requirements, the company must ensure that advertisement of the liquidation is made in Iris Oifigiúil (section 586).

In a creditors' winding up, an ordinary resolution of the company to wind up and appoint a liquidator (Form G2), a notice of appointment of liquidator (Form E2) and a creditors resolution must be filed with the CRO. The liquidator must summon meetings of the members and creditors at the end of each year, to give an account of his/her acts and dealings and the conduct of the winding up. Details of the meeting must be delivered to the CRO on Form E3.

Form E3, Liquidator's account of his/her acts and dealings - is not required if the winding up continues for a period of less than 12 months. However, if the winding up continues for a longer period, a Form E3 must be filed for the first 12 months, and for every period of exactly 12 months thereafter. Any lesser period to the date of the final meeting need not be covered by a form E3.

It is the duty of the liquidator to summon, giving 7 days' notice thereof, the holding of –

- (i) if a committee of inspection has been appointed, a meeting of the committee of inspection; or
- (ii) if no committee of inspection has been appointed, a meeting of the creditors of the company, for a day falling not later than 28 days after the anniversary concerned;

and lay before that meeting an account of his or her acts and dealings and of the conduct of the winding up during the preceding year.

The liquidator shall, within 7 days after the date of such meeting, send a copy of the foregoing account to the Registrar. Where a meeting of the committee of inspection is held, that committee may, by resolution, direct the liquidator to convene a meeting of the creditors of the company and, where such a direction is so given, the liquidator shall cause such meeting to be convened and held no later than 21 days after the date of such resolution.

Form E4, liquidator's section 681 account - is not required if the winding up continues for a period of less than 12 months. However, if the winding up continues for longer, Form E4 must be filed for the initial period of 12 months and each subsequent six-month period, and any lesser period, up to the date of the close of winding up (date of final meeting on Form E7). Form E4 has a filing fee of €15. The form E4 must be submitted within 14 days of the anniversary to the CRO.

Form E7, Return of the final members and creditors meetings is submitted at the completion of the liquidation and is accompanied by a full statement of account spanning the duration of the liquidation (Form E5). The final meeting must be called with at least 28 days written notice given prior. There is no necessity to place an advertisement in a newspaper.

Forms E2, E3, E4, G2, E7 and E5 have filing fees of €15 each.

### **Dissolution**

3 months after registration of the final documents - E7 and E5, the company is deemed to be dissolved. The dissolution can be voided within 2 years under section 708 of the Companies Act 2014. A copy of the court order must be sent to the CRO (with the filing fee €15) and the status of the company is then returned to Liquidation. It is possible within the 3 months after the date of receipt/ registration of the final forms for any interested party to apply for the dissolution to be deferred. Any order made should be submitted to the CRO and promptly, otherwise the company could be dissolved. A court order has a filing fee of €15.

## **3.3 Court Winding Up**

A company can be wound up by the Court at the instigation principally of any member or creditor of the company or the Minister in appropriate circumstances. The Court appoints the liquidator and he/she becomes an officer of the Court and works under its supervision. (The Court, used in relation to a company, means the High Court). The court may direct that the liquidation continue using the rules relating to a Creditors Voluntary Winding Up.

### **Statutory requirements**

A petition must be presented to the Court and when a winding up order is made a certified copy must be delivered to the CRO. The court order will be submitted by an officer of the High Court. (See Section 7 regarding grounds for winding up by the Court). The liquidator, when appointed, must publish a notice of his/her appointment in Iris Oifigiúil (section 586 following creditors winding up procedures). A copy of any other subsequent order annulling or staying the winding up or dissolving the company must also be delivered for registration.

## Forms to be delivered in a winding up by the Court

Forms to be Filed	Description	Filing Fee	Time to be Delivered	Period to be Covered
Court Order	Court Order to wind up and appoint the liquidator		Forthwith - will be sent to CRO by Court	
E3	Liquidators account of his/her acts and dealings	€15	Within 7 days of presentation at meeting	12 month periods. Any lesser period to end of liquidation need not be covered.
E4	Liquidators s.681 account	€15	Within 14 days of completion of period	First 12 months and thereafter every 6 months and also any lesser period to end date of liquidation
E5	Statement of account	€15	Within 7 days of meeting	Only submitted if following Creditors procedure
E7	Return of Final Meeting	€15	Within 7 days of meeting	Only submitted if following Creditors procedure
Court Order	Court Order to cease liquidation and dissolve company (Court order may direct that final Examiners Certificate be filed together with court order).	€15 €15	Within 21 days	Submitted where court directs. (such companies would not be following creditors procedure).

Form E3 is now submitted in a court winding up as well as in a voluntary winding up under section 680(4) of the Companies Act 2014. Form E3, Liquidator's account of his/her acts and dealings - is not required if the winding up continues for a period of less than 12 months. However, if the winding up continues for a longer period, a Form E3 must be filed for the first 12 months, and for every period of exactly 12 months thereafter. Any lesser period to the date of the final meeting need not be covered by a form E3.

It is the duty of the liquidator is to summon, giving 7 days' notice thereof, the holding of –

- (i) if a committee of inspection has been appointed, a meeting of the committee of inspection; or
- (ii) if no committee of inspection has been appointed, a meeting of the creditors of the company, for a day falling not later than 28 days after the anniversary concerned;

and lay before that meeting an account of his or her acts and dealings and of the conduct of the winding up during the preceding year. The liquidator shall, within 7 days after the date of such meeting, send a copy of the foregoing account to the Registrar. Where a meeting of the committee of inspection is held, that committee may, by resolution, direct the liquidator to convene a meeting of the creditors of the company and, where such a direction is so given, the liquidator shall cause such meeting to be convened and held no later than 21 days after the date of such resolution.

Dependent on what the court order to appoint the liquidator states, forms E4 and E3 are submitted. The court may, on its own motion, make an order requiring the liquidator to make, at such time as the affairs of the company have been completely wound up, an application for the dissolution of the company. If an order is not made directing this, the procedure for the final meeting of creditors liquidation should be followed.

If the order states that the creditors method is followed:

Form E4, liquidator's section 681 accounts -is not required if the winding up continues for a period of less than 12 months. However, if the winding up continues for longer, Form E4 must be filed for the initial period of 12 months and each subsequent six-month period, and any lesser period, up to the date of the close of winding up (date of final meeting on Form E7). Form E4 has a filing fee of €15. The form E4 must be submitted within 14 days of the anniversary to the CRO.

Form E7, Return of the final members and creditors meetings is submitted at the completion of the liquidation and is accompanied by a full statement of account spanning the duration of the liquidation (Form E5). The final meeting must be called with at least 28 days written notice given prior. There is

no necessity to place an advertisement in a newspaper.

If the order states that the dissolution order is to be sought:

E4 must be submitted for a period starting from the date of presentation of the petition to the Court or date of appointment of the liquidator, and brought down to a date 12 months from the commencement of the winding up, and further Form E4 must be submitted for each subsequent period of 6 months, and any lesser period up to the date of the examiners final certificate (if any), or to the date that the Court Order dissolves the company.

Forms E3, E4, E7 and E5 have filing fees of €15 each. A court order and examiners certificate also have a filing fee of €15 each.

#### **Dissolution by Court Order**

The winding up will conclude once the court order dissolving the company, the examiners certificate, if any, and the final Form E4 has been lodged with the CRO. When the Court makes an order for the dissolution of a company, it may order that the company be dissolved from the date of presentation of the order to the CRO.

#### **Dissolution by Creditors Procedure**

3 months after registration of the final documents - E7 and E5, the company is deemed to be dissolved. The dissolution can be voided within 2 years under section 708 of the Companies Act 2014. A copy of the court order must be sent to the CRO (with the filing fee €15) and the status of the company is then returned to Liquidation.

The dissolution can be voided within 2 years under section 708 of the Companies Act 2014. A copy of the court order must be sent to the CRO (with the filing fee €15) and the status of the company is then returned to Liquidation. It is possible within the 3 months after the date of receipt/registration of the final forms for any interested party to apply for the dissolution to be deferred. Any order made should be submitted to the CRO and promptly, otherwise the company could be dissolved. A court order has a filing fee of €15.

### **3.4 Power to apply for determination of questions concerning exercise powers**

Under section 631 of the Companies Act 2014, 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 in relation to the exercise or proposed exercises of any of the powers of the liquidator.

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.

A certified copy of an order made by virtue of this section annulling the resolution to wind up or staying the proceedings in the winding up shall forthwith be forwarded by the company to the registrar of companies for registration. Under section 669 of the Companies Act 2014, the applicant for the annulment of the winding up, must submit form E669 to the CRO forthwith.

The resolution to wind up the company once passed can be annulled only by the High Court. In order for the company to return to a Normal status and recommence trading, a copy of the court order must be submitted. A court order has a filing fee of €15.

## 4. Qualification for appointment as liquidator/provisional liquidator

The Companies Act 2014 requires qualification for appointment as either liquidator and examiner.

Qualification Category	
1. Member of Prescribed Accountancy Body	See 4.2
2. Practising Solicitor	See 4.3
3. Member of Professional Body recognised by IAASA	See 4.4
4. Person qualified under the laws of other EEA state	See 4.5
5. Person of practical experience	See 4.6

A person shall not be qualified for appointment as a liquidator/examiner of a company unless he or she falls within a paragraph of the Table to section 633 of the Companies Act.

See Section 4.8 regarding specific disqualifications that prevent appointment as liquidator.

The Supervisory Authority is:

The Irish Auditing and Accounting Supervisory Authority  
Address: Willow House, Millennium Park, Naas, County Kildare

Ph: 045 983600  
Email: [info@iaasa.ie](mailto:info@iaasa.ie)

Fax: 045 983 601  
Website: [www.iaasa.ie](http://www.iaasa.ie)

### 4.1 Liquidations initiated prior to Companies Act 2014

A liquidator (including a provisional liquidator) can continue to act, in a winding up where the appointment was made prior to the Companies Act 2014's commencement. (i.e The Act does not affect the appointment of liquidator in any case which was started prior to the 2014 Act).

If a liquidator is applying to act as a liquidator to a company under category 5 (Person of Practical experience), the liquidator can continue to act as liquidator to a company where the appointment was made prior to the introduction of the 2014 Act, even where that application has been refused. (i.e. the 2014 Act does not affect the appointment of a liquidator in any case which was started prior to the 2014 Act).

### 4.2 Category 1 - Member of a prescribed accountancy body

The person is a member of a prescribed accountancy body, being a person who –

- holds a current practising certificate issued by that body; and
- is not prohibited by virtue of rules of that body or a direction, ruling or decision of that body, or any disciplinary or professional practice committee of it, from acting as a liquidator.

### 4.3 Category 2 - Practising solicitor

The person is a solicitor, being a solicitor who –

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

### 4.4 Category 3 - Member of other professional body recognised by IAASA

The person is a member of such professional body as the IAASA may from time to time recognise for

the purposes of this section, being a person who –

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

#### 4.5 Category 4 - Person qualified under the laws of other EEA State

The person is entitled under the laws of an EEA state, (other than Ireland), to act as a liquidator in insolvency proceedings and the qualifications held by, or the circumstances otherwise relating to the person, that entitle him or her so to act are ones that by virtue of any Community act, entitle him or her to act as a liquidator in the State.

#### 4.6 Category 5 - Persons with practical experience of windings up and knowledge of relevant law

The person -

- having made application in that behalf to the IAASA in the prescribed form within 30 months after the commencement of this section; and
- paid the prescribed fee and stands authorised for the time being by the Supervisory Authority to be so appointed, such authorisation having been granted on the grounds that each of the following is satisfied:
  - (i) the person has, prior to the commencement of this section, obtained adequate relevant experience of the winding up of companies and knowledge of the law applicable thereto by virtue of the person's either -
    1. having been –
      - (A) employed in relevant work by a person who at the relevant time fell (or, if this section had been in operation at that time, who would have fallen) within categories 1, 2 or 3; or
      - (B) engaged on his or her own account in relevant work; or
    2. having practised in an EEA State (not being the State) as a liquidator;
  - (ii) the person is, in the opinion of IAASA, after consultation with the ODCE, a fit and proper person to act as a liquidator; and
  - (iii) the person does not fall within categories 1, 2, 3 or 4.

#### 4.7 Requirements for professional indemnity cover<sup>2</sup>

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

- the person;
  - any servant or agent of the person; or
  - both of them,
- in the conduct of the winding up of the company concerned.

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

- a policy of indemnity insurance being effected and maintained by the person with an insurance undertaking; or
- the person's participating, in a manner legally enforceable by the person, in an indemnity fund of a mutual nature that is recognised by the Supervisory Authority for the time being for the purposes of this section.

<sup>2</sup> **Please Note** : This does not apply to a person as respects any winding up in relation to which he or she has been appointed liquidator **before the commencement of this section.**

## 4.8 Ceasing to act as Liquidator where not qualified under Categories 1-5

If a liquidator ceases to be qualified to act as a liquidator (see sections 4.2.- 4.7), the person shall then vacate his or her office. On vacating such office by reason of those circumstances, the person shall give notice in writing that he or she has vacated such office (by reason of those circumstances)

- (a) within 2 days after the date of vacating office, to –
  - (i) the Registrar of Companies (CRO) (using Form E2a);
  - (ii) the Director of Corporate Enforcement (ODCE); and
  - (iii) if the person had been authorised under category four (Section 4.5) to be appointed as a liquidator - the IAASA;and
- (b) within 14 days after the date of vacating office, to –
  - (i) in the case of a winding up by the court, the court and –
    - (I) if a committee of inspection has been appointed - the members of that committee; or
    - (II) if no committee of inspection has been appointed – the creditors of the company;
  - (ii) in the case of a creditors' voluntary winding up –
    - (I) if a committee of inspection has been appointed - the members of that committee; or
    - (II) if no committee of inspection has been appointed – the creditors of the company;or
  - (iii) in the case of a members' voluntary winding up - the members of the company.

As respects a person who has been authorised under category 5 (Section 4.6) to be appointed a liquidator –

- if the person becomes qualified for appointment as a liquidator under any category 1-4 (sections 4.2. to 4.5), then the category 5 qualification ceases to have effect;
- the IAASA may withdraw or suspend (for such period and on such terms as it thinks fit) the person's authorisation under that paragraph 5, if it is satisfied that the person is no longer sufficiently capable of acting as a liquidator or is no longer a fit and proper person to act as a liquidator.

IAASA may, to meet the cost of conducting such inquiries as may be necessary to be conducted for the purposes of its exercising the powers to withdraw or suspend authorisation, levy, not more frequently than annually, such periodic charge as may be reasonable on any person acting as a liquidator, being a person who so acts by virtue of the person's being authorised under category 5.

## 4.9 Specific disqualification from appointment as liquidator or provisional liquidator.

None of the following persons shall be qualified to be appointed or act as liquidator of a company<sup>3</sup> -

- (a) a person who is, or who within the period of 24 months before the date of the commencement of the winding up has been, an officer or employee of the company;
- (b) except with the leave of the court, a parent, spouse, civil partner, brother, sister or child of an officer of the company;
- (c) a person who is a partner or in the employment of an officer or employee of the company;
- (d) a person who is an undischarged bankrupt;
- (e) a person who is not qualified by virtue of a preceding provision of this subsection for appointment as liquidator of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

An application for leave under (b) shall be supported by such evidence as the court may require. (Section 635 Companies Act 2014). If, while acting as liquidator of a company, a person ceases to be qualified to so act, the person shall vacate his or her office. See 4.8.

<sup>3</sup> An auditor of a company cannot also be the liquidator to the company. References to (a) to (e) under section 635 Companies Act 2014, includes – reference to a child of an officer of the company shall be deemed to include a child of the officer's civil partner where the child is ordinarily resident with the officer and the civil partner. An officer or employee of the company includes a **statutory auditor** of the company.

## 5. Appointment and removal of a Liquidator

### 5.1 Members' voluntary winding up.

Subsequent to the appointment of a liquidator of a company under section 583 in a members' voluntary winding up, the company, in general meeting, may, at a meeting convened for that purpose

- remove the liquidator;
- appoint a liquidator to replace or act with the existing liquidator; or
- appoint a liquidator to fill a vacancy in the office of liquidator.

A general meeting of the company for the purpose of removing or appointing to replace or act with the existing liquidator, may be convened, on 10 days' notice to the members of it, by –

- any member of it with the written authority of not less than one tenth in number of the members;  
or
- an existing liquidator;

or for the purpose of appointing a liquidator to fill a vacancy in the office, may be convened, on 10 days' notice to the members of it, by –

- (i) any member of it with the foregoing written authority;
- (ii) an existing liquidator; or
- (iii) any contributory.

The powers conferred on the company shall be subject to any order the court may make with regard to the matter on application to it by any contributory or an existing liquidator.

Form E2b should be filed for the removal of a liquidator and form E2c completed for the appointment of the replacement liquidator.

### 5.2 Creditors' voluntary winding up.

This section applies at any time subsequent to the appointment of a liquidator of a company under section 588 in a creditors' voluntary winding up. Where this section applies, the creditors may, at a meeting convened for that purpose, by resolution of a majority, in value only, of the creditors present personally or by proxy and voting on the resolution, exercise the following powers.

Those powers of the creditors are to –

- remove the liquidator<sup>4</sup>;
- appoint a liquidator to replace or act with the existing liquidator;
- appoint a liquidator to fill a vacancy in the office of liquidator.

A meeting of the creditors of the company may be convened, on 10 days' notice to the creditors, by any creditor of it with the written authority of not less than one tenth in value of the creditors or an existing liquidator. The powers conferred on the creditors shall be subject to any order the court may make with regard to the matter on application to it by any creditor or an existing liquidator.

### 5.3 Court Wind Up.

In any winding up, the court may, on the application by a member, creditor, liquidator or the Director of Corporate Enforcement or on its own motion –

- appoint a liquidator if from any cause whatever there is no liquidator acting;
- on cause shown, remove a liquidator and appoint another liquidator.

Where the court makes an order, it may give such consequential directions, including directions as to the delivery and transfer of the seal, books, records and any property of the company, as it thinks fit.

<sup>4</sup> Liquidator in this situation does not include a court appointed liquidator under section 588(5) and shall be deemed to include the one or more liquidators appointed by the creditors in exercise of the powers under any such paragraph.



## 5.4 Resignation of liquidator.

In any winding up, a liquidator may resign from office. Where a liquidator resigns, he or she shall give notice in writing of that fact, within 2 days after the date of resigning, to the Registrar (using the Form E2a) and the Director of Corporate Enforcement and, within 14 days after the date of resigning

- (a) in the case of a winding up by the court, to the court and –
    - (i) if a committee of inspection has been appointed – to the members of that committee; or
    - (ii) if no committee of inspection has been appointed – to the creditors of the company;
  - (b) in the case of a creditors' voluntary winding up –
    - (i) if a committee of inspection has been appointed – to the members of that committee; or
    - (ii) if no committee of inspection has been appointed – to the creditors of the company;
- or
- (c) in the case of a members' voluntary winding up – to the members of the company.

### Form E2A - Notice of Resignation as liquidator

If the liquidator has resigned under section 635(5) (using Form E2a), notice may also be required to be sent to the IAASA. Section 635 relates to specific disqualification from acting as liquidator (see section 4.8 above). The notice is necessary if the person had been authorised pursuant to paragraph 5 of the Table to section 633 to be appointed as a liquidator (see section 4.7 above).

## 5.5 Notifications and filings of appointments and removals.

The chairperson of any meeting at which a liquidator is appointed or removed shall, following the meeting, forthwith deliver to the liquidator notice in writing of the liquidator's appointment or removal, unless the liquidator or his or her duly authorised representative is present at the meeting where the resolution concerned was passed.

In default of election of a chairperson by the meeting, the person who shall be chairperson of that meeting shall be the person who was the signatory or the first signatory, as the case may be, on the notice by which the meeting was called.

The chairperson of a meeting at which a liquidator is removed shall, following the meeting, forthwith deliver to the Registrar Form E2b for the removal of a liquidator and form E2c completed for the appointment of a second liquidator.

### Form E2 (Notice of Appointment - Members or Creditors Liquidation)

The liquidator, following receipt of notice of his or her appointment (in a members or creditors voluntary winding up), shall forthwith deliver to the Registrar notice of his or her appointment in the form E2. This form should be submitted within 14 days of the appointment. In a court liquidation, there is no need to submit a form E2. Instead, a copy of the court order is submitted.

### Court Order (Notice of Appointment - Court liquidation)

Where an order is made appointing or removing a liquidator -

- the applicant for the order; or
- in a case where the order is made by the court of its own motion, such officer of the court as may be prescribed, shall, following the making of the order, forthwith deliver or cause to be delivered to the liquidator notice in writing of the liquidator's appointment or removal, unless the liquidator or his or her duly authorised representative is present in court when the order is made.

Where an order is made appointing or removing a liquidator, such officer of the court as may be prescribed shall, following the making of the order, forthwith cause the Registrar to be furnished with such particulars of the order as may be prescribed.

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

Section 569 of the Companies Act 2014 states the grounds under which the company may be wound up -

- if the company has by special resolution resolved that the company be wound up by the court;
- if the company does not commence its business within a year after the date of its incorporation or suspends its business for a continuous period of 12 months;
- if the members of the company are all deceased or no longer exist;
- if the company is unable to pay its debts<sup>5</sup>;
- if the court is of opinion that it is just and equitable that the company should be wound up;
- if the court is satisfied that the company's affairs are being conducted, or the powers of the directors are being exercised, in a manner oppressive to any member or in disregard of his or her interests as a member and that, despite the existence of an alternative remedy, winding up would be justified in the general circumstances of the case;
- if the court is satisfied, on a petition of the Director of Corporate Enforcement, that it is in the public interest that the company should be wound up; or
- in the circumstances referred to section 535(2) (examiner unable to secure agreement or formulate proposals for compromise or scheme of arrangements) or 542(5) (where the court refuses to confirm the proposals of the examiner).

An application to the court for the winding up of a company shall be by petition presented either by -

- the company; or
- any creditor or creditors (including any contingent or prospective creditor or creditors) of the company; or
- any contributory or contributories of the company, or by all or any of those parties, together or separately, but this is subject to the following provisions.

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

### <sup>5</sup> Circumstances in which company deemed to be unable to pay its debts.

A company shall be deemed to be unable to pay its debts -

- if - (i) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding **€10,000** then due, has served on the company (by leaving it at the registered office of the company) a demand in writing requiring the company to pay the sum so due; and  
(ii) the company has, for **21 days** after date of the service of that demand, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or
- if - (i) 2 or more creditors, by assignment or otherwise, to whom, in aggregate, the company is indebted in a sum exceeding **€20,000** then due, have served on the company (by leaving it at the registered office of the company) a demand in writing requiring the company to pay the sum so due; and  
(ii) the company has, for **21 days** after date of the service of that demand, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of each of the creditors;
- 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
- 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.

## 7. Declaration of solvency

In a members voluntary winding up of a company, a declaration of solvency (Form E1) must be delivered to the CRO pursuant to the Summary Approval Procedure under section 579/207 of the Act. In certain circumstances, a declaration can be prepared under section 580 Companies Act 2014.

### 7.1 Summary Approval Procedure

Section 207 of the Companies Act 2014 allows for a declaration to be made where a company wishes to use the Members Voluntary Winding Up procedure. The Form E1 (SAP) is completed and is made not more than 3 months prior to the making of the declaration and must include the report of the independent person (see 7.2 below).

Section 580 provides that on the expiry of the period, if any, that is fixed for the duration of a company by its constitution or should such happen, when the event occurs on the occurrence of which a company's constitution provides that the company is to be dissolved - a members' voluntary winding up of the company may, alternatively to the employment of the Summary Approval Procedure for that purpose, be commenced in accordance with section 580(3). Form E1(41) is completed.

A declaration of solvency is ineffective unless it is made within 30 days immediately preceding the date of passing of the resolution for winding up the company. It should not be submitted later than the resolution to wind up and should be submitted to the registrar not later than 21 days after the resolution being passed if the Summary Approval Procedure is used. (Within 14 days of the commencement where section 580 is being used).

#### Precheck the form

The Form E1 has a checklist on the front which should be completed by the individual presenting the form to the CRO. It is important to complete the form correctly as an ineffective form E1 will result in the company having to apply to the High Court for directions if incorrect.

Check and make sure that:

- The form must be completed by all or a majority of the directors
- The names and residential addresses of these directors must be stated
- The declaration requires the original signatures of the directors
- If the company has changed its name within the twelve months immediately preceding the liquidation, then the former name of the company must be included.
- A declaration under SAP (E1-SAP) would include total assets and liabilities made at the latest practicable date before the making of the declaration, and in any event not more than three months before the making of the declaration.
- If the Statement (or Totals) are not in the Euro currency, then the currency should be clearly displayed, indicating that it is in dollars, sterling etc.
- Form E1 must include the report of the independent person. (Part B). Many people sign Part B but fail to include the actual report. The report itself is needed.
- Under the Summary Approval Procedure, the form E1 must be submitted within 21 days of the passing of the resolution (section 207(2) Companies Act 2014).
- The declaration is required to be completed before the passing of the resolution, so if both are being completed on the same date, the times should be placed on both forms, so as to indicate that the declaration of solvency was completed prior to the passing of the resolution to wind up. (section 580 Companies Act 2014 only).
- The declaration of solvency is made within 30 days immediately preceding the date of passing of the resolution for winding up the company

### 7.2 Report of the Independent Person

An Independent Person is a person qualified at the time of the report to be appointed, or to continue to be statutory auditor of the company.

A declaration of solvency must have the following attached:

- A report by an independent person made in accordance with section 580(4) or 207 Companies

- Act marked with the letter "B", and signed by the independent person;
- The report must state whether, in the opinion of the independent person the said declaration, is not unreasonable.

Format of Independent Persons Report: Section 207 Report:

A declaration pursuant to section 207 of the Act of 2014 shall have no effect for the purposes of the Act of 2014 unless it is:

- (i) accompanied by a report that contains, at least, relevant information in accordance with the headings set out below, and
- (ii) drawn up by a person who is qualified at the time of making the report to be appointed, or continue to be, the statutory auditor of the company.

The report shall be addressed to the declarant company and shall contain, at least, the following information:

- I. Introductory paragraph identifying the directors' declaration and accompanying documents to which the report relates;
- II. Statement on the responsibilities of directors;
- III. Statement on the responsibilities of statutory auditor;
- IV. Scope of work performed by statutory auditor;
- V. Other relevant facts (if any) that the statutory auditor has relied on in reaching his/her opinion that the declaration is not unreasonable;
- VI. The opinion of the statutory auditor that the declaration pursuant to section 207 is not unreasonable (insert appropriate section reference to report); and
- VII. Date and signature of statutory auditor, who having compiled the report, has formed the opinion that the declaration pursuant to section 207 is not unreasonable.

### 7.3 Ineffective Declarations

If the declaration of solvency is not made and delivered in accordance with sections 207 or 580 of the Companies Act 2014, it is ineffective and the winding up then becomes a creditors voluntary winding up. Section 586 then applies. Even a technical breach will render the declaration of solvency ineffective.

However, it would not be possible for a liquidator in such circumstances to comply with the provisions of section 587 of the Act, which requires that a meeting of the creditors be called at least ten days before the date of the meeting of the company and that it be held on the same day or the day after the meeting of the company at which the resolution to wind up is passed.

Frequently, an application to the High Court pursuant to section 631 Companies Act 2014 is pursued, in order to annul the resolution and to wind up the company, so that the members voluntary procedure can be employed again. Otherwise an application can be made using a like power under section 203(4) for the High Court to declare valid for all purposes the carrying on of the activity.

Therefore, it is of utmost importance that the declaration of solvency is thoroughly checked as regards signatures, dates and compliance with the provisions of the Companies Act, before submitting for registration in the CRO.

**AN OIFIG UM CHLÁRÚ CUIDEACHTAÍ**  
**Oifig Poiblí:** Teach Bloom, Plás Gloucester Íochtarach, BÁC 1  
**Fiosruithe:** Bóthar Uí Bhriain, Ceatharlach, R93 E920

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**COMPANIES REGISTRATION OFFICE**  
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