

COMPARISON BETWEEN BANKRUPTCY AND COMPANY WINDING UP TIMETABLES

(By Trevor Traylor)

BANKRUPTCYCOMPULSORY WINDING UP

Interim Receiver

Can be appointed at any time after the presentation of a petition and before a receiving order is made; to protect the assets; is always the Official Receiver. (s.8 Bankruptcy Act 1914)

Provisional Liquidator

Can be appointed at any time after the presentation of a petition and before a winding up order is made; is usually the Official Receiver but may be any other fit person; to protect the assets; the Court may define his powers (s.238 Companies Act 1948)

Special Manager

May be appointed by the OR, on the application of a creditor, to act until a trustee is appointed (s.10)

Appointed by the Court on the application of the OR as provisional liquidator or as liquidator (s.263).

Relation back of trustee's title

Commences at the time of the act of bankruptcy being committed on which the receiving order is made or if more than one act, back to the first dating from within three months before the date of the presentation of the petition (s.37). Subject to mitigation by provisions of ss. 45 and 46, and s.4 of the 1926 Act.

Commencement of
Winding-up
proceedings

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- (1) Date of presentation of the petition.
- (2) Where, before the presentation of the petition, a resolution has been passed to wind up voluntarily, the date of the resolution (s.229).

Statement of
Affairs

To be submitted to the OR within 3 days of the receiving order on a debtor's own petition; within 7 days of the receiving order on a creditor's petition (s.14)

To be submitted to the OR within 14 days of the winding up order, or of the appointment of a provisional liquidator (s.235).

Distress

If levied after commencement of bankruptcy, is only available for rent accrued due 6 months prior to the Adjudication Order (s.35). If the landlord distrains within 3 months prior to the receiving order proceeds of the distraint are subject to the claims of preferential creditors (s.33(4)).

Void unless sanctioned by the Court (s.228)

3 months prior to the Winding up Order (s.319(7))

Sheriff, as
to goods taken
in execution

Must retain proceeds of sale for 14 days after sale where judgment debt exceeds £250 (s.41 as amended by Insolvency Act 1976).

Similar provision (s.326(2) as amended by Insolvency Act 1976).

Execution
creditor

Creditor may not retain benefit of the execution unless he has completed the execution before the date of the receiving order and before the notice of the presentation of any bankruptcy petition or of an available act of bankruptcy (Sec.40)

Creditor not entitled to retain benefit of execution against liquidator unless execution completed before the commencement of the winding-up (Sec. 325)

Continuance or commencement of legal proceedings	Leave of the Court required (Sec. 7(1))	Similar provision (Sec. 231)
Meetings	First meeting of creditors to be held not later than 14 days after the date of the receiving order (1914 Act, First Schedule (1)).	First meetings of creditors and contributories to be held within 1 month, or, if a Special Manager has been appointed, then within 6 weeks after the date of the winding-up order (Rule 121)
Quorum	3 creditors, or all the creditors if their number does not exceed three, entitled to vote at the meeting (Section I (24) and Rule 247 of the Bankruptcy Rules, 1952).	Similar provision (Rule 138 of the Companies (Winding-up) Rule 1949).
Resolution for appointment of Trustee/Liquidator	Creditors may resolve by a majority in value present, personally or by proxy. (ordinary resolution - see ss. 19 and 167)	Majority in number and value of the creditors or contributories present personally or by proxy (Rule 134).
General proxy	Can only be given to a creditor's manager or clerk, or any other person in his regular employment (Schedule I (18)).	May be given to any person (Rule 149). A minor cannot be a proxy holder.
Special proxy	May be given to any person (Schedule I (19)).	May be given to any person (Rule 150).
Appointments of Trustee/Liquidator	By ordinary resolution of creditors at first meeting of creditors. Person appointed to give security in manner required by the Department of Trade (s.19)	Court will make appointment on receiving report of nominations at first meetings of creditors and contributories (s.239).

Committee of
Inspection

Not more than five
nor less than three
creditors or their
representatives
(s.20(2)).

May be creditors and/
or contributors. No
number fixed - as decided
by the meeting (s.253).

Fraudulent
preference

Within 6 months before
the presentation of
the petition (s.44(1))

Similar provision
(s.320).

Disclaimers
of onerous
property

By a trustee, within
12 months after his
appointment, or after
he has become aware
of the property (s.54(1))

With 12 months after
commencement of the
winding-up or within 12
months of knowledge of
the property (s.323).

Period in which
trustee/liquidator
has to elect
whether to
disclaim or not,
following notice
in writing.

28 days after receipt
of notice from person
interested in the
property (s.54(4)).

Similar provision
(s.323(4)).

Voluntary
Settlement

Is voidable by the
trustee if the
settlor becomes bank-
rupt (commits an
avoidable act of
bankruptcy) within
2 years after the date
of the settlement
(s.42(1)).

Not applicable

Is also voidable if
within a further 8
years of bankruptcy
unless debtor was
solvent at the date
of settlement
exclusive of settled
property (s.42(1)).

A settlement made
more than 10 years
before bankruptcy can
also be set aside if
shown to be fraudulent
under the provisions
of Section 172(3) of
the Law Property Act
1925

Composition/
Scheme of
Arrangement

To be approved by a special resolution being a majority in number, and three fourths in value of all creditors who have proved their debts. Creditors who have proved their debts and whose proofs are admitted, and who do not vote on the debtor's proposal will be reckoned as voting against. Proposal must be approved by the Court (ss. 16 and 21).

Similar provisions
(s.206)

Vesting of
property

Property of bankrupt vests in the trustee, or in the OR until a trustee is appointed, immediately upon the making of the Adjudication Order (s.53)

Property of company does not vest in the liquidator except by order of the Court (s.244).

Reputed
ownership

The trustee may claim property belonging to third parties which is in the hands of the bankrupt by consent of the true owner in circumstances that he is the reputed owner thereof (s.38(c)).

Not applicable

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