

Supplemental provisions in relation to section 633 (including requirements for professional indemnity cover)

634. (1) Subject to the preceding section, subsection (3) 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 Supervisory Authority, against losses and claims arising in respect of civil liability incurred by the person in respect of any act or omission by—

(a) the person,

(b) any servant or agent of the person, or

(c) both of them,

in the conduct of the winding up of the company concerned.

(2) The reference in subsection (1) 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) a policy of indemnity insurance being effected and maintained by the person with an insurance undertaking; or

(b) 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.

(3) Subsection (1) 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) A person shall not act as liquidator of a company at a time when he or she is not qualified under section 633 or this section for appointment to that office.

(5) If, while acting as liquidator of a company, a person ceases to be qualified under section 633 or this section for appointment to that office, the person shall thereupon vacate his or her office.

(6) 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,

(ii) the Director, and

(iii) if the person had been authorised pursuant to paragraph 5 of the Table to section 633 to be appointed as a liquidator — the Supervisory Authority,

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.

(7) A person who contravenes subsection (4) or (5) shall be guilty of a category 2 offence.

(8) A person who contravenes subsection (6) shall be guilty of a category 3 offence.

(9) As respects a person who has been authorised under paragraph 5 of the Table to section 633 to be appointed a liquidator—

(a) if the person becomes qualified for appointment as a liquidator of a company by reason of another provision of that Table, the person's authorisation under that paragraph 5 shall thereupon cease to have effect,

(b) the Supervisory Authority 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.

(10) The Supervisory Authority may, to meet the cost of conducting such inquiries as may be necessary to be conducted for the purposes of its exercising the powers under subsection (9)(b), 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 paragraph 5 of the Table to section 633.

(11) In this section—

“insurance undertaking” means the holder of an authorisation under the European Communities (Non-Life Insurance) Regulations 1976 );

“liquidator” includes a provisional liquidator.