

Companies of fixed duration, etc.: alternative means of commencing members' voluntary winding up

580. (1) In a case falling with paragraph (a) or (b) of section 579 (3), a members' voluntary winding up of a company may be commenced if the company in general meeting has passed a resolution (whether before or after expiry of the period referred to in that paragraph (a) or the happening of the event referred to in that paragraph (b)) that the company be wound up voluntarily and subsections (2) to (4) are complied with.

(2) Where, in either of the cases mentioned in subsection (1), it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than 2 directors, the majority of the directors may, at a meeting of the directors, make a declaration to the effect that they have made a full inquiry into the affairs of the company, and that having done so, they have formed the opinion that the company will be able to pay or discharge its debts and other liabilities in full within such period not exceeding 12 months after the commencement of the winding up as may be specified in the declaration.

(3) Such a declaration shall have no effect for the purposes of this Part unless—

(a) it is made at a meeting of the directors held not earlier than 30 days before—

(i) the date of the meeting referred to in subsection (1), or

(ii) if the resolution referred to in that subsection is passed by the means provided under section 193 or 194, the date of the signing of the resolution by the last member to sign,

(b) it states the total amount of the company's assets and liabilities as at the latest practicable date before the date of making of the declaration and in any event at a date not more than 3 months before the date of that making,

(c) a report made, in accordance with the provisions of that subsection, by a person referred to in subsection (4) is attached to it, and

(d) either—

(i) the company has forwarded with each notice of the meeting at which the resolution is to be considered, or

(ii) if the means referred to in section 193 or 194 for passing the resolution is followed, the company has appended to the resolution,

a copy of the declaration.

(4) The report referred to in subsection (3)(c) is a report drawn up, in the prescribed form, by a person qualified at the time of the report to be appointed, or to continue to be, the statutory auditor of the company and stating whether, in the opinion of that person, the declaration is not unreasonable.

(5) The company shall deliver, within 14 days after the commencement of the members' voluntary winding up under this section, a copy of the foregoing declaration to the Registrar.

(6) The provisions of this section shall be read and shall operate so that a members' voluntary winding up under this section may be carried on at a time falling before compliance with the requirement of subsection (5) that a copy of the declaration there referred to be delivered to the Registrar; however — should a failure to comply with that requirement occur — that failure then invalidates the carrying on of that activity, but this is without prejudice to the power of validation conferred on the court by subsection (7).

(7) On application to it by any interested party, the court may, in any case where there has been a failure to comply with subsection (5), declare that the carrying on of the members' voluntary winding up shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so.