

Disclaimer of onerous property in case of company being wound up

615. (1) In this section “onerous property” means property (whether tangible or intangible) that is property of a company which is being wound up and that falls into one or more of the following categories:

- (a) land of whatsoever kind burdened with onerous covenants;
- (b) shares or stock in any company or undertaking;
- (c) an unprofitable contract;

(d) any other property which is unsaleable or not readily saleable by reason of its binding the possessor of it to the performance of any onerous act or to the payment of any sum of money.

(2) Subject to subsections (4) and (7), the liquidator of the company concerned may, with the leave of the court and subject to the provisions of this section, by writing signed by him or her, at any time within the relevant period, disclaim onerous property; such leave may be granted by the court and the property disclaimed notwithstanding that the liquidator—

- (a) has endeavoured to sell or has taken possession of the property, or
- (b) has exercised any act of ownership in relation to it.

(3) In subsection (2) “relevant period” means the period of 12 months after the date of the commencement of the winding up of the company or such extended period as may be allowed by the court.

(4) Where the existence of onerous property has not come to the knowledge of the liquidator of the company concerned within one month after the date of the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within 12 months after the date on which the liquidator has become aware thereof or such extended period as may be allowed by the court.

(5) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed; however it shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(6) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(7) The liquidator shall not be entitled to disclaim any property under this section in any case where—

- (a) an application in writing has been made to the liquidator by any person interested in the property

requiring the liquidator to decide whether he or she will or will not disclaim, and

(b) the liquidator has not, within a period of 28 days after the date of receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he or she intends to apply to the court for leave to disclaim.

(8) Any person damaged by the operation of a disclaimer under this section shall be deemed to be a creditor of the company concerned to the amount of the damages, and may accordingly prove the amount as a debt in the winding up.