

233. Certificate of solvency in case of proposal to wind up voluntarily

- (1) Subject to subsection (1A), where 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 issue a certificate in the specified form (the ***certificate of solvency***), signed by the directors, to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding 12 months from the commencement of the winding up as may be specified in the certificate of solvency. (*Amended 30 of 1999 s. 17*)
- (1A) A certificate of solvency may be issued by the directors of the company other than at a meeting of the directors if, but only if, before the certificate is issued, a resolution has been passed by the directors authorizing the certificate to be issued. (*Replaced 28 of 2003 s. 86*)
- (2) A certificate of solvency shall have no effect for the purposes of this Ordinance unless — (*Amended 28 of 2003 s. 86*)
 - (a) it is issued within the 5 weeks immediately preceding the date of the passing of the resolution for winding up the company or on that date but before the passing of the resolution and is delivered to the Registrar for registration not later than the date of delivery to the Registrar of a copy of the resolution; and (*Amended 79 of 1988 s. 7*)
 - (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the issuing of the certificate.
- (3) Any director of a company signing a certificate of solvency under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the certificate, shall be liable to a fine and imprisonment; and if the company is wound up in pursuance of a resolution passed within the period of 5 weeks after the issuing of the certificate, but its debts are not paid or provided for in full within the period stated in the certificate, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion. (*Amended 7 of 1990 s. 2*)
- (4) A winding up in the case of which a certificate of solvency has been issued and delivered under this section is in this Ordinance referred to as ***a members' voluntary winding up***, and a winding up in the case of which a certificate of solvency has not been issued and delivered as aforesaid is in this Ordinance referred to as ***a creditors' voluntary winding up***.
- (5) Notwithstanding subsections (1) and (2), any declaration of solvency made in connexion with a winding up commenced but not completed before the date of commencement[#] of the Companies (Amendment) Ordinance 1984 (6 of 1984) shall, if it has been effective for the purposes of this Ordinance before that date, continue to have effect for those purposes on and after that date, and—
 - (a) such winding up shall be deemed to be a members' voluntary winding up within the meaning of this section;
 - (b) subsection (3) shall not apply in relation to any such declaration or winding up.
- (6) In the case of a private company having only one director, the sole director may issue a certificate of solvency by recording the certificate and signing the record of it in the company's minute book; and recording and signing the certificate shall be deemed to satisfy the requirement under subsection (1) that the certificate be issued at a meeting of the directors. (*Added 28 of 2003 s. 86*)
- (7) Notwithstanding subsections (1) and (2), any declaration of solvency made in connection with a winding up commenced on or after the date of commencement[#] of the Companies (Amendment) Ordinance 1984 (6 of 1984) but not completed before the date of

commencement^{##} of section 86(6) of the Companies (Amendment) Ordinance 2003 (28 of 2003) shall, if it has been effective for the purposes of this Ordinance before the latter date, continue to have effect for those purposes on and after that date, and—

- (a) such winding up shall be deemed to be a members' voluntary winding up within the meaning of this section; and
- (b) subsection (3) shall apply in relation to any such declaration or winding up as if the declaration were a certificate of solvency. *(Added 28 of 2003 s. 86)*

(Replaced 6 of 1984 s. 162. Amended 28 of 2003 s. 86)

[cf. 1948 c. 38 s. 283 U.K.]

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