

**177. Circumstances in which company may be wound up by court**

- (1) A company may be wound up by the court if—
  - (a) the company has by special resolution resolved that the company be wound up by the court;
  - (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
  - (c) the company has no members; (*Replaced 28 of 2003 s. 76*)
  - (d) the company is unable to pay its debts;
  - (e) the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved;
  - (f) the court is of opinion that it is just and equitable that the company should be wound up.
- (2) On the application of the Registrar for the winding up of a company, the company may be wound up by the court if it appears to the court—
  - (a) that the company is being carried on for an unlawful purpose or any purpose lawful in itself but one which cannot be carried out by a company; or
  - (b) that throughout a period of not less than 6 months ending on the date of the winding-up petition the company has not had—
    - (i) in the case of a private company, at least one director; or
    - (ii) in the case of a company not being a private company, at least 2 directors; or (*Replaced 28 of 2003 s. 76*)
  - (c) that throughout the period referred to in paragraph (b) the company has not had a company secretary; or
  - (d) that the company— (*Amended 28 of 2012 ss. 912 & 920*)
    - (i) had failed to pay the annual registration fee payable under the Eighth Schedule of the pre-amended Ordinance; or
    - (ii) has failed to pay the annual registration fee payable under a regulation made under section 26 of the Companies Ordinance (Cap. 622); or
  - (e) without prejudice to paragraphs (a) to (d), that the company has been persistently in breach of its specified obligations.
- (3) A company registered before the commencement<sup>#</sup> of the Companies (Amendment) Ordinance 1984 (6 of 1984) may by special resolution alter the provisions contained in its articles by adding a provision to the effect that the company is to be dissolved on the occurrence of a specified event, with or without another provision providing for or prohibiting the alteration of the added provision: (*Amended 28 of 2012 ss. 912 & 920*)

Provided that, where a private company passes such a resolution, an application may be made to the court for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court. (*Amended 28 of 2003 s. 76*)
- (4) Where a private company passes a resolution under this section altering the provisions contained in its articles, sections 90(5)(a), (5)(b) and (8) and 91(1)(a), (5) and (6) of the Companies Ordinance (Cap. 622) apply in relation to the alteration and to any application made under this section in the same manner as they apply in relation to alterations made under that section 90 and to applications made under that section 91. (*Replaced 28 of 2003*)

s. 76)

- (5) Where a company (not being a private company) passes a resolution under this section altering the provisions contained in its articles, section 90(5)(c), (6) and (8) of the Companies Ordinance (Cap. 622) applies in relation to the alteration made under this section in the same manner as it applies in relation to alterations made under that section 90. (*Added 28 of 2003 s. 76*)
- (6) In relation to a resolution for altering the conditions of a company's memorandum that is passed by a company (whether a private company or not) under this section before the commencement<sup>@</sup> of section 76 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of this section in force immediately before that commencement shall continue to have effect as if section 76 of that Ordinance had not been enacted. (*Added 28 of 2003 s. 76*)
- (7) In this section—
- specified obligation*** (指明義務) means an obligation under the pre-amended Ordinance, this Ordinance or the Companies Ordinance (Cap. 622). (*Added 28 of 2012 ss. 912 & 920*)

(*Replaced 6 of 1984 s. 130. Amended 28 of 2012 ss. 912 & 920*)

[*cf. 1948 c. 38 s. 222 U.K.*]

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Editorial Note:

<sup>#</sup> Commencement date: 31 August 1984.

<sup>@</sup> Commencement date: 13 February 2004.