

209A. Power of court to order winding up to be conducted as creditors' voluntary winding up

- (1) The court may on the application of the liquidator or any creditor made—
- (a) in the case of a company in respect of which an order has been made under section 227F, not later than 3 months from the date of such order; and
 - (b) in any other case, not later than 3 months from the date of a resolution to make such an application passed at any of the meetings (including an adjourned meeting) of creditors and of contributories held pursuant to section 194 or such further time as the court may permit,
- order that the winding up of a company ordered to be wound up by the court shall, from the date of the order made on such application, be conducted as if the winding up were a creditors' voluntary winding up.
- (2) Where an application is made under subsection (1), the court shall have regard to—
- (a) the wishes of the creditors and contributories of the company, as proved to it by sufficient evidence;
 - (b) the progress of the winding up (including in particular assets realized, proofs of debts submitted by creditors and whether a statement of affairs, or a supplementary affidavit (if required), has been submitted under section 190); (*Amended 14 of 2016 s. 47*)
 - (c) whether any report has been made to the court under—
 - (i) section 191(1); or
 - (ii) section 191(2) that in the liquidator's opinion a fraud has been committed;
 - (d) whether any director, former director or other officer of the company has been convicted under the pre-amended Ordinance, this Ordinance or any other law for any offence involving fraud, dishonesty, fraudulent trading, misfeasance or breach of duty in relation to the affairs of the company; (*Amended 28 of 2012 ss. 912 & 920*)
 - (e) whether any criminal proceedings in respect of any offence referred to in paragraph (d) are contemplated or have been instituted against any person referred to in that paragraph;
 - (f) whether the company forms part of a group of companies the affairs of which are proposed to be investigated or are being investigated under— (*Amended 28 of 2012 ss. 912 & 920*)
 - (i) a provision of the pre-amended Ordinance having a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1);
 - (ii) this Ordinance; or
 - (iii) any other law; (*Amended 28 of 2012 ss. 912 & 920*)
 - (g) whether there has been a failure on the part of the directors to provide a statement of affairs, or a supplementary affidavit (if required), which the court considers satisfactory or to co-operate with the Official Receiver or liquidator or to comply with any requirement under this Ordinance in relation to the winding up of the company; (*Amended 14 of 2016 s. 47*)
 - (h) whether any director or former director of any other company which has gone into liquidation within 5 years of the date when the company went into liquidation, has been directly or indirectly concerned in the management of the company;
 - (i) the fact that the insolvency of the company is a matter of public concern; and

- (j) any other matter which the court considers appropriate in the particular circumstances.
- (3) Where an application has been made under subsection (1) in relation to a company in respect of which an order had been made under section 227F then, without affecting the generality of subsection (2)(a) and subject to subsection (4), the court shall before hearing the application direct that meetings of the creditors and contributories be called, held and conducted in such manner as the court may direct for the purpose of ascertaining the wishes of the creditors and contributories and may appoint a person to act as the chairman of any such meeting and to report the result of the meeting to the court.
- (4) Where the court is of the opinion that it is impractical to hold meetings of the creditors or of the contributories, the court may order that such other course of action as directed by the court be taken to ascertain the wishes of the creditors and contributories.
- (5) In an order made under this section, notwithstanding any other provision of this Ordinance, the court may, after taking into consideration the wishes of the creditors and contributories, direct either that the liquidator of the winding up by the court appointed under section 192 continue to act as the liquidator or appoint any other person to act as the liquidator.
- (6) Where an application is made under subsection (1)—
- (a) the liquidator shall; and
 - (b) the Official Receiver may,
- submit to the court a report with regard to the application. *(Replaced 46 of 2000 s. 28)*
- (7) On the hearing of any application made under subsection (1), the Official Receiver may appear and call, examine or cross-examine any witness if he so thinks fit and may support or oppose the application.

(Replaced 59 of 1990 s. 2)