

Companies Act 2006



Companies House
— for the record —

liquidation and insolvency (Scotland)

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Is this guidance for you?

This guide will be relevant to you if you:

- are a director or secretary of a company
- act as an adviser to a company

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This guide answers many frequently asked questions and provides information on completing the most commonly used filings relating to this area. The guide is not drafted with unusual or complex transactions in mind. Specialist professional advice may be needed in those circumstances.

Introduction

This publication is a simple guide to liquidation and other insolvency procedures. It summarises some of the rules that apply to corporate voluntary arrangements, moratoria, administrations, receivers, voluntary liquidations, compulsory liquidations and EC regulations. Please also refer to the relevant legislation, which you will find in the:

- Companies Act 2006;
- Insolvency Act 1986 (as amended);
- Insolvency Rules (Scotland) 1986;
- Insolvency Act 2000;
- Enterprise Act 2002;
- Insolvency (Scotland) Amendment Rules 2002;
- Insolvency (Scotland) Amendment Rules 2003;
- Insolvency (Scotland) Amendment Rules 2010;
- Insolvency (Scotland) Regulations 2003;
- Act of Sederunt (Sheriff Court Company Insolvency Rules 1986) Amendment 2003, and
- Council Regulation (EC) No 1346/2000.

The winding up, liquidation, insolvency, cessation of payments and similar procedures that apply to a PLC also apply to a European company, 'Societas Europaea' (SE) registered in GB. For general information on SEs, please see our guidance on, 'The European Company: Societas Europaea (SE)'.

Please remember that if your company is considering liquidation, or any other measures to deal with insolvency, you should seek appropriate professional advice or consult an authorised insolvency practitioner. We can only assist with queries relating to filing statutory documents with the Registrar of Companies for Scotland.

Chapter 1 General information

1. What are insolvency proceedings?

These are formal measures taken to deal with company debt. There are many different types of company insolvency proceedings. All are covered in this publication.

Please note: the initiation or termination of insolvency procedures involving a European company (SE), or any decision to continue operating the SE, must be notified to Companies House Edinburgh on Form SE WU01. This is in addition to the other requirements mentioned in this guide. For more information about SEs, please see our guidance on, 'The European Company: Societas Europaea (SE)'.

2. Do insolvency proceedings apply to all types of companies?

The parts of this guidance covering compulsory winding-up and receivers (including administrative receivers) apply to registered and unregistered companies (including overseas companies).

The parts of this guidance covering voluntary winding-up and administration orders do not apply to unregistered companies, which cannot be wound up by these methods.

If the liquidation or receivership began before 29 December 1986, then the law in force at that time will continue to apply.

Remember: Not all companies in liquidation are insolvent.

3. Do all companies have to go through insolvency proceedings before being dissolved?

No. If the Registrar of Companies for Scotland has reason to believe that a company is not carrying on business or is not in operation, its name may be struck off the register and dissolved without going through liquidation. A private company that is not trading may apply to the Registrar of Companies for Scotland to be struck off the register. **This procedure is not an alternative to formal insolvency proceedings.**

More information about striking off and dissolution of a company is available in our guidance on 'Strike-off, Dissolution and Restoration'.

4. Can anyone supervise insolvency procedures?

All liquidators, administrative receivers, administrators and supervisors taking office on or after 29 December 1986 must be authorised insolvency practitioners.

Receiver managers, Law of Property Act (LPA) receivers and nominees appointed to manage a corporate voluntary arrangement moratorium do not have to be authorised.

Insolvency practitioners may be authorised by:

- the Chartered Association of Certified Accountants;
- the Insolvency Practitioners' Association;
- the Institute of Chartered Accountants in England and Wales;
- the Institute of Chartered Accountants in Ireland;
- the Institute of Chartered Accountants of Scotland;
- the Law Society;
- the Law Society of Scotland; or
- the Secretary of State for Business, Innovation and Skills.

5. What happens to the directors of an insolvent company?

The liquidator, administrative receiver or administrator has a duty to send the Secretary of State for Business, Innovation and Skills, a report on the conduct of all directors who were in office in the last 3 years of the company's trading. The Secretary of State has to decide whether it is in the public interest to seek a disqualification order against a director.

Examples of the most commonly reported conduct are:

- continuing the company's trading when the company was insolvent;
- failing to keep proper accounting records;
- failing to prepare and file accounts or make returns to Companies House Edinburgh; and
- failing to send in returns or pay to the Crown any tax that is due.

Chapter 2

Corporate voluntary arrangements (CVA) including CVA moratoria

1. What is a corporate voluntary arrangement?

A corporate voluntary arrangement is when a company makes an agreement with its creditors by proposing a 'composition in satisfaction of its debt' or a 'scheme of arrangement of its affairs'. This means an arrangement, approved by the court, in which the company has formally agreed terms with its creditors for the settlement of its debts.

2. Who may propose a corporate voluntary arrangement?

A corporate voluntary arrangement may be proposed by:

- the administrator, if there is an administration order;
- the liquidator, if the company is being wound up; or
- the directors, in other circumstances.

3. Who considers the proposal?

When the directors have proposed the arrangement, the nominee appointed to supervise its implementation reports to the court within 28 days on whether, in his or her opinion, meetings of the company and of its creditors should be called.

4. How is a proposed corporate voluntary arrangement approved?

The meetings summoned by the nominee decide whether to approve the arrangement which, subject to certain restrictions, may be approved with or without modifications. All creditors who had notice of the meeting, whether or not entitled to vote, are bound by the terms of the agreement.

5. What happens when the corporate voluntary arrangement is approved?

If the meetings of members and creditors approve the arrangement, then the nominee or his replacement becomes the supervisor of the arrangement.

6. What needs to be sent to Companies House Edinburgh?

The supervisor must send a copy of the chairman's report of the meeting.

At least once every 12 months, the supervisor must send an account of receipts and payments, together with a progress report, to all interested parties including the Registrar of Companies for Scotland.

When the arrangement is completed, the supervisor must notify the Registrar of Companies for Scotland, within 28 days after final completion. If the arrangement is suspended or revoked, the Registrar of Companies for Scotland must be notified.

The appropriate forms are:

Form title	Number
Notice to Registrar of Companies of voluntary arrangement taking effect	1.1 (Scot)
Notice to Registrar of Companies of order of revocation or suspension of voluntary arrangement	1.2 (Scot)
Notice to Registrar of Companies of supervisor's abstract of receipts and payments	1.3 (Scot)
Notice to Registrar of Companies of completion or termination of voluntary arrangement	1.4 (Scot)

Please note: These forms are not available from Companies House. They can be obtained from company law stationers or by visiting the Accountant in Bankruptcy website.

7. Corporate voluntary arrangement moratorium

The Insolvency Act 2000 introduced the option of a moratorium into the existing corporate voluntary arrangement procedures.

The courts decide whether a company is eligible for a moratorium. The moratorium will normally last for a period of 28 days and will be managed by a nominee, who may or may not be a registered insolvency practitioner.

The Insolvency (Scotland) Amendment Rules 2002 came into force on 1 January 2003 and introduced the following statutory forms that are required to be filed with the Registrar of Companies for Scotland:

Form title	Number
Notice to Registrar of Companies of commencement of moratorium	1.11 (Scot)
Notice to registrar of Companies of extension or further extension or renewal or continuation of moratorium	1.12 (Scot)
Notice to Registrar of Companies of ending of moratorium	1.14 (Scot)
Notice to Registrar of Companies of withdrawal of nominee's consent to act	1.16 (Scot)
Notice to registrar of Companies of appointment of a replacement nominee	1.18 (Scot)

Please note: These forms are not available from Companies House. They can be obtained from company law stationers or by visiting the Accountant in Bankruptcy website.

At the end of a moratorium a company may (or may not) proceed to a corporate voluntary arrangement.

Chapter 3

'In Administration' and 'administration orders'

The current law concerning administration was introduced with effect from 15 September 2003. Under this regime, a company will usually be described as being 'in administration' – under the old regime a company would be described as subject to an 'administration order'.

What follows is a brief outline of the process of administration: it is not a complete statement of the law.

1. What is 'in administration'?

Administration is when a person, 'the administrator', is appointed to manage a company's affairs, business and property for the benefit of the creditors. The person appointed must be an insolvency practitioner and have the status of an officer of the court (whether or not he or she is appointed by the court).

The objective of administration is to:

- (a) rescue a company as a going concern;
- (b) achieve a better price for the company's assets or otherwise realise their value more favourably for the creditors as a whole than would be likely if the company were wound up (without first being in administration); or
- (c) in certain circumstances, realise the value of property in order to make a distribution to one or more preferential creditors.

2. How does a company enter administration?

A company enters administration when the appointment of an administrator takes effect. An administrator may be appointed by:

- (a) an administration order made by the court;
- (b) the holder of a floating charge; or
- (c) the company or its directors.

The administrator must perform his or her functions as quickly and efficiently as reasonably practicable.

3. What are the effects on a company of being in administration?

When a company enters administration:

- any pending winding-up petitions will be dismissed or suspended;
- there will be a moratorium on insolvency and on other legal proceedings;
- if an administrative receiver has been appointed, he or she must vacate office;
- if a receiver of part of the company's property has been appointed, he or she must vacate office (if the administrator requires this).

4. Who must be told that a company is in administration?

As soon as reasonably practicable, an administrator must send a notice of his or her appointment to the company and each of its creditors and publish notice of his or her appointment in the Gazette and in a newspaper in the area where the company has its principal place of business.

What is the Gazette?

The Gazette is the official newspaper of record which contains various statutory notices and advertisements. All references to the Gazette throughout this guidance relate to the Edinburgh Gazette in respect of companies registered in Scotland. It is published twice weekly and can be obtained from The Edinburgh Gazette, 26 Rutland Square, Edinburgh EH1 2BW. Visit the Gazette for more information.

The administrator must send a notice of his or her appointment to the Registrar of Companies for Scotland on Form 2.11B (Scot).

While a company is in administration, every business document issued by or on behalf of the company or the administrator must state the name of the administrator and that he or she is managing the affairs, business and property of the company.

5. What does the process of administration involve?

The administrator will request a statement of the company's affairs from relevant people (e.g. an officer or employee of the company).

No later than 8 weeks after the company enters administration, the administrator must make a statement setting out proposals for achieving the purpose of the administration or explaining why they cannot be achieved. The proposals may include a voluntary arrangement or a compromise or arrangement with creditors or members.

The statement setting out the proposals must be sent to:

- The Registrar of Companies for Scotland.

- Every creditor of the company with an invitation to an initial creditors' meeting, if one is to be held. The business of the initial creditors' meeting will be to approve (with or without modifications) the statement of proposals. Following the initial meeting, the administrator may hold further creditors' meetings, form a creditors committee, or deal with matters in correspondence between the administrator and creditors; and
- Every member of the company unless the administrator undertakes to provide a copy free of charge to any member of the company who applies in writing for a copy. Any revisions to the proposals following a creditors' meeting must, likewise, be notified to members.

Decisions taken at creditors' meetings must be reported to the Registrar of Companies for Scotland on Form 2.23B (Scot), an End of Administration form.

6. When does administration end?

There are several ways in which administration can come to an end.

Administration can end automatically when the administrator's term of office expires and must be notified to the Registrar of Companies for Scotland on Form 2.21B (Scot). The appointment of an administrator expires after 1 year. However, this may be extended with the consent of creditors or the court. Any extension must be notified to the Registrar of Companies for Scotland on Form 2.22B (Scot).

An administrator appointed under a court order may apply to the court to end administration if he or she thinks that the purpose of the administration cannot be achieved or the company should not have entered administration, or a creditors' meeting requires the application. The court will discharge the administration order and the administrator must notify the Registrar of Companies for Scotland on Form 2.24B (Scot).

An administrator appointed by the holders of a floating charge or by the company or its directors may end administration when the purpose of administration has been sufficiently achieved. The administrator must file notice with the court and with the Registrar of Companies for Scotland on Form 2.23B (Scot).

Administration may end on the application of a creditor to the court alleging an improper motive on the part of the person who appointed the administrator or applied to the court for an administration order. The administrator must send a copy of the order with Form 2.24B (Scot) to the Registrar of Companies for Scotland within 14 days of the order being made.

Administration may end when the company moves into creditors' voluntary winding up. This can happen where the administrator thinks that each secured creditor is likely to be paid and a distribution will be made to unsecured creditors, if there are any. The administrator must notify the Registrar of Companies for Scotland on Form 2.25B (Scot) and send copies to the court and each creditor. The company will then be wound up as

if a resolution for voluntary winding up had been passed on the day on which notice is registered with the Registrar of Companies for Scotland.

Administration may end when the company moves into dissolution. This can happen if the administrator thinks that a company has no property with which to make a distribution to its creditors. The administrator must send notice to the Registrar of Companies for Scotland on Form 2.26B (Scot) and send copies to the court and each creditor.

3 months after the date the form is registered with the Registrar of Companies for Scotland, the company will be dissolved unless, on application to the court, an order is made to extend or suspend the period or stop the dissolution. Notice of the order must be notified to the Registrar of Companies for Scotland on Form 2.27B (Scot).

7. Which forms should be used?

The Insolvency Scotland (Amendment) Rules 2003 came into force on the 15 September 2003, and introduced new statutory forms for filing with the Registrar of Companies for Scotland.

The Insolvency (Scotland) Amendment Rules 2010 came into force on 6 April 2010 and introduced changes to the administration regime along with a new statutory form 2.16BZ (Scot). The Administration Forms are listed below:

Form title	Number
Notice of administrator's appointment	2.11B (Scot)
Notice of statement of affairs	2.15B (Scot)
Statement of administrator's proposals	2.16B (Scot)
Notice of Deemed approval of proposals	2.16BZ (Scot)
Statement of administrators revised proposals	2.17B (Scot)
Notice of result of meeting of creditors	2.18B (Scot)
Notice of order to deal with secured property	2.19B (Scot)
Administrators progress report	2.20B (Scot)
Notice of automatic end of administration	2.21B (Scot)
Notice of extension of period of administration	2.22B (Scot)
Notice of end of administration	2.23B (Scot)
Notice of court order ending administration	2.24B (Scot)
Notice of move from administration to creditors' voluntary liquidation	2.25B (Scot)
Notice of move from administration to dissolution	2.26B (Scot)
Notice to registrar of companies in respect of date of dissolution	2.27B (Scot)
Notice of resignation by administrator	2.29B (Scot)
Notice of Vacation of office by administrator	2.30B (Scot)
Notice of appointment of replacement/additional administrator	2.31B (Scot)
Notice of insufficient property for distribution to unsecured creditors other than by virtue of s.176A(2)(a)	2.32B (Scot)

Please note: These forms are not available from Companies House. They can be obtained from company law stationers or by visiting the Insolvency Service website.

Chapter 4 Receivers

1. What is a receiver?

Appointed by or on behalf of the holder of a floating charge, a receiver has the power to sell or otherwise realise the charged assets of the company in an attempt to repay the debt owed to the charge-holder.

2. Who tells the Registrar of Companies for Scotland and Accountant in Bankruptcy (AIB) that a receiver has been appointed?

Within 7 days of the appointment, the person who appoints the receiver must deliver notice to the Registrar of Companies for Scotland and AIB. When the receiver ceases to act, the holder of the floating charge must deliver notice to the Registrar of Companies for Scotland and AIB within 14 days.

3. What document must the receiver send?

Within 3 months of his appointment, the receiver must deliver a report to AIB with copies to:

- the company's creditors;
- the holders of a floating charge; and
- any trustees for secured creditors of the company.

The report must:

- explain the circumstances leading to the appointment of the receiver;
- give information about any action being taken by the receiver;
- include a summary of the statement of affairs prepared for the receiver by the officers or employees of the company.

Statement of affairs Form 3.2 (Scot)

This is a summary of the company's assets, liabilities and creditors. The administrative receiver decides whether it is required and who should prepare it.

Within 2 months of the anniversary of appointment, the receiver must send AIB an account of receipts and payments covering the first 12 months of receivership and for every 12 months thereafter.

4. Which forms should be used?

The appropriate forms are:

Form title	Number
Notice of the appointment of a receiver by a holder of a floating charge	1 (Scot)
Notice of the appointment of a receiver by a court	2 (Scot)
Notice of the receiver ceasing to act or of his removal	3 (Scot)
Receiver's abstract of receipts and payments	*3.2 (Scot)
Notice of Authorisation to Dispose of Secured Property	3.4 (Scot)
Notice of receiver's report	3.5 (Scot)

* Form 3.2(Scot) is lodged with the Accountant in Bankruptcy not the Registrar of Companies for Scotland.

Please note: These forms are not available from Companies House. They can be obtained from company law stationers or by visiting the Accountant in Bankruptcy website.

Chapter 5 **Voluntary liquidation**

There are two kinds of voluntary liquidation:

- members' voluntary liquidation (MVL) - which means the directors have made a statutory declaration of solvency; and
- creditors' voluntary liquidation (CVL) - which means that the directors have not made such a declaration.

1. When can a company go into MVL?

This can take place when the directors of a company believe that the company is solvent.

A majority of the company's directors must make a statutory declaration of solvency in the 5 weeks before a resolution to wind up the company is passed.
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2. What is in the declaration?

The statutory declaration will state that the directors have made a full inquiry into the company's affairs and that, having done so, they believe that the company will be able to pay its debts in full within 12 months from the start of the winding-up. The declaration will include a statement of the company's assets and liabilities as at the latest practicable date before making the declaration.

3. When does liquidation actually start?

The liquidation starts when the members, in general meeting, pass a special resolution (Companies Act 2006) to wind up the company voluntarily.

4. Must notice of voluntary liquidation be given to anyone?

Yes. Notice of the special resolution for voluntary winding-up of the company must be published in the Edinburgh Gazette within 14 days of the general meeting. The company must also send a copy of the special resolution to the Registrar of Companies for Scotland and AIB within 15 days of the general meeting.

5. When may a CVL be appropriate?

A company may go into CVL when it cannot pay its debts.

6. What must the company do?

The company passes a special resolution (Companies Act 2006) to say that it cannot continue in business because of its liabilities and that it is advisable to wind up.

The resolution must be:

- advertised in the Edinburgh Gazette within 14 days; and
- sent to the Registrar of Companies for Scotland and AIB within 15 days.

A meeting of creditors must be held in the next 14 days after passing the resolution. Notice of the meeting must be sent to the creditors at least 7 days before the meeting. Also, the directors must prepare a statement of affairs for consideration at the meeting, and appoint one of the directors themselves to attend and preside over the meeting.

When the liquidator is appointed, the directors must provide him or her with a statement of affairs and otherwise co-operate with the liquidator.

7. Does the company have to advertise notice of the meeting?

Yes. The meeting must be advertised in the Edinburgh Gazette and in two newspapers in the area where the company has its principal place of business.

8. What are the main duties of a liquidator?

The liquidator is appointed to wind up the company's affairs. The liquidator does this by calling in all the company's assets and distributing them to its creditors. If anything is left over, the liquidator distributes it among the members of the company.

9. Does a liquidator need to notify anyone of his or her appointment?

Yes. Within 14 days of being appointed, a liquidator must publish a notice of appointment in the Edinburgh Gazette and notify the AIB.

10. What does the liquidator have to send to AIB?

The liquidator must send a statement of affairs and a statement of receipts and payments for the first 12 months of liquidation. After that, statements must be sent every 6 months until the winding-up is complete.

11. Can an MVL be converted into a CVL?

Yes. If the liquidator decides that the company will not be able to pay its debts in full in the period stated in the directors' statutory declaration of solvency, he or she must call a meeting of the creditors which must be held within 28 days. The liquidation becomes a CVL from the date of the meeting.

12. What are the requirements for giving notice in such a case?

The liquidator must:

- post a notice of the meeting to each creditor at least 7 days before the date of the meeting;
- advertise the date of the meeting in the Edinburgh Gazette and in 2 newspapers in the area where the company has its principal place of business; and
- prepare a statement of affairs for consideration at the meeting. A copy of the statement must be sent to the AIB within 7 days of the meeting.

13. What happens when the company's affairs are fully wound up?

The liquidator presents an account to final meetings of creditors and members of the company. He or she must advertise the meetings in the Edinburgh Gazette at least one month before.

Within one week of the meeting having taken place, the liquidator must send the account to the Registrar of Companies for Scotland and AIB together with a return of the final meeting.

Unless the court makes an order deferring the dissolution of the company, it is dissolved 3 months after the return and account are registered at Companies House Edinburgh.

14. Which forms should be used?

The appropriate forms are:

Form title	Number
Notice of appointment of liquidator voluntary winding-up (members or creditors)	600
Statement of affairs	4.4 (Scot)
Liquidator's statement of receipts and payments	4.5 (Scot)
Notice of liquidator's statement of receipts and payments	4.6 (Scot)
Notice of final meeting of creditors	4.17 (Scot)
Return of final meeting of voluntary winding-up	4.26 (Scot)
Notice of Court's Order Sisting Proceedings in Winding Up by the Court	4.27 (Scot)
Liquidator's statement of account	92 (Scot)

Please note: With the exception of form 600, these forms are not available from Companies House. They can be obtained from company law stationers or by visiting the Accountant in Bankruptcy website.

- Forms 600, 4.4(Scot), 4.5(Scot), 4.6(Scot) and 92(Scot) to be sent to AIB.
- Forms 4.17(Scot), 4.26(Scot) and 4.27(Scot) to be sent to Companies House Edinburgh and AIB.

Chapter 6 Compulsory liquidation

1. What is 'compulsory liquidation'?

Compulsory liquidation of a company is when the company is ordered by a court to be wound up.

2. Which courts can order a compulsory liquidation?

The Court of Session, or Sheriff Court with the appropriate jurisdiction, may order the winding-up of a company. This may be, for example, on the petition of a creditor or creditors on the grounds that the company cannot pay its debts.

A company is regarded as unable to pay its debts if, for example, a creditor:

- is owed more than £750;
- presents a written demand in the prescribed form (known as a statutory demand (Form 4.1 (Scot)) to the company; and
- the company fails to pay, secure or agree a settlement of the debt to the creditor's reasonable satisfaction.

There are other situations where a company is deemed unable to pay its debts. Please read the relevant legislation.

The court may also order the company to be wound up on the petition of:

- the company itself;
- the company's directors or one or more members;
- the Secretary of State for Business, Innovation and Skills; or
- the Financial Services Authority (formerly the Securities and Investment Board).

In the case of a European company (SE) registered in GB, the Secretary of State may petition the Court for a winding up order on the grounds that it appears that the SE does not have both its head office and registered office in GB. For more information on SEs, please see our guidance on 'The European Company: Societas Europaea (SE)'.

3. Must the petition be advertised?

Unless the court directs other arrangements, the petition must be advertised in the Edinburgh Gazette.

4. What appears on the company record held by Companies House?

If the petition is successful, the company must send Form 4.2 (Scot) and a copy of the winding-up order to the Registrar of Companies for Scotland and AIB straightaway and it will be placed on the company's public record.

The petition itself is not presented to the Registrar of Companies for Scotland so it will not appear on the public records.

5. Who acts as the liquidator when an order is made to wind up the company?

A provisional liquidator may be appointed after the petition is presented. If a winding up order is made, an interim liquidator is appointed. Both the provisional and interim liquidator must notify the Registrar of Companies for Scotland and AIB of their appointments.

6. What are the duties of the interim liquidator?

Within 28 days of the appointment, the interim liquidator investigates the company's affairs and will call meetings of creditors and contributories (that is, those people liable to contribute to the assets of a company in the event of it being wound up). The meetings appoint the official liquidator who must notify AIB within 7 days. If no liquidator is appointed at the meetings, the court appoints a liquidator.

The liquidator must send to AIB a statement of receipts and payments for the first 12 months of liquidation and thereafter every 6 months until the winding up is complete.

7. What happens when the winding-up is complete?

When the Registrar of Companies for Scotland and AIB receive notice from the liquidator of the final meeting that winding-up is complete, the Registrar of Companies for Scotland will register it and publish its receipt in the Edinburgh Gazette.

Unless the Court directs otherwise, the company will be dissolved three months after the notice was registered at Companies House Edinburgh.

If the liquidator is satisfied that the company's realisable assets (that is, assets which could be sold or disposed of to raise money) will not cover the expenses of winding-up and that no further investigation of the company's affairs is necessary, he or she may apply to the Registrar of Companies for Scotland for early dissolution of the company. The company will be dissolved 3 months after the application is registered at Companies House Edinburgh.

8. Which forms should be used?

The appropriate forms are:

Form title	Number
Notice of winding-up order	4.2 (Scot)
Liquidator's statement of receipt and payments	4.5 (Scot)
Notice of liquidator's statement of receipts and payments	4.6 (Scot)
Notice of appointment of liquidator	4.9 (Scot)
Notice of final meeting of creditors	4.17 (Scot)

Please note: These forms are not available from Companies House. They can be obtained from company law stationers or by visiting the Accountant in Bankruptcy website.

- Forms 4.5 (Scot), 4.6 (Scot) and 4.9 (Scot) to be sent to AIB.
- Forms 4.2 (Scot) and 4.17 (Scot) to be sent to Companies House Edinburgh and AIB.
- Form 4.9 (Scot) to be sent by Provisional Liquidator to Companies House Edinburgh.

Chapter 7

European cross-border insolvency proceedings

Council Regulation (EC) No.1346/2000 became effective on 31 May 2002. The Regulation is directly applicable and an integral part of each member state's law (except Denmark where parallel legislation will apply). To implement the Regulation in the UK, it was necessary to make some limited changes to the Insolvency Act 1986 and the Insolvency Rules.

(i) What is the effect of the Regulation?

The Regulation restricts where insolvency proceedings can be opened to the country where the debtor has his "centre of main interests". It requires insolvency proceedings opened under the Regulation to be recognised, and liquidators to be able to exercise their powers, in all member states.

The relevant company insolvency proceedings covered by the Regulation in the UK are:

- Winding up by or subject to the supervision of the court;
- Creditors' voluntary winding up (with confirmation by the court);
- Administration; and
- Corporate voluntary arrangements under insolvency legislation

The Regulation does not apply to receiverships – administrative or otherwise – nor to members' voluntary winding up or to winding-up orders.

As a result of the regulations a number of statutory forms (relating primarily to the opening of insolvency proceedings) have been amended and one new form has been introduced.

(ii) Companies incorporated in Great Britain

Insolvency proceedings opened in this country will continue as normal. However, insolvency proceedings may be opened in another EU Member State if the company has its centre of main interests there. The public records of companies registered in England and Wales will show insolvency proceedings opened in another Member State of the EU. This will be the only indication that there are insolvency proceedings taking place abroad – the 'L' (for liquidation) marker will not appear against the company name on the Registrar's index of company names.

(iii) Companies incorporated in other EU member states

Insolvency proceedings may be opened in the UK and be governed by UK law if the company has its centre of main interests here. Alternatively, insolvency proceedings may be opened in another Member State.

The public records of EU companies that have registered a place of business or branch within England and Wales will show insolvency proceedings opened in another Member State of the EU. This will be the only indication that there are insolvency proceedings taking place abroad – the 'L' (for liquidation) marker will not appear against the company name on the Registrar's index of company names.

EU companies that have not registered a place of business or branch within England and Wales can submit details of insolvency proceedings opened in another Member State of the EU. These documents may be searched on the Register of EC Insolvency Orders by contacting Companies House on 0303 1234 500.

4. Where can I obtain copies of the relevant legislation and get further information?

Copies of the Council Regulation and relevant UK Statutory Instruments are available on the Insolvency Service web-site.

Enquiries about the Regulations should be forwarded to the Insolvency Service Policy Unit or telephone 020 7291 6740

Chapter 8 Frequently Asked Questions

Liquidation and other insolvency procedures can be lengthy and complex. This guide cannot answer every query but these are some of the most frequently asked questions.

1. Do I need to send the Court Order appointing a provisional liquidator to Companies House Edinburgh?

The Court Order should not be sent, however a Form 4.9 (Scot) is completed on the appointment of a Provisional Liquidator and delivered to Companies House Edinburgh. This is required by Rule 4.2 of the Insolvency (Scotland) Rules 1986.

2. How do I defer the date of dissolution of a company that was subject to liquidation proceedings?

When the Registrar of Companies for Scotland receives a liquidator's final documentation under sections 201 and 205 of the Insolvency Act 1986, it must be registered straightaway. After a period of approximately three months, the company is dissolved. However, it may be possible to defer the date at which the dissolution is to take effect.

In order to do so, the Registrar of Companies for Scotland must receive either a direction to defer from the Secretary of State (in compulsory liquidation cases – s.205) or an order of court to defer (in voluntary cases – s.201). You should immediately apply for whichever is appropriate. Please note that whilst it may be possible to extend the deferment period by making a further application, it is not possible to shorten it. You should, therefore, select the period of the deferment with care.

We must receive the document in time to allow us to examine and register it before the company is dissolved.

3. Do the directors of a company subject to a liquidation need to file annual accounts and annual returns (Forms AR01)?

Once a company goes into liquidation and the statutory liquidation documents are registered at Companies House Edinburgh, there is no need to file annual accounts and annual returns. However, until Companies House Edinburgh receives notification that the liquidation has commenced the annual accounts and annual returns will still be deemed to be due.

If the company comes out of Liquidation, via a court order to sist (see below) and is returned to the live companies register then annual accounts and annual returns should then be filed up to date. Failure to comply could result in the company being struck off the register.

Any other queries relating to filing annual accounts and annual returns should be referred to Compliance Section at Companies House by contacting Companies House on 0303 1234 500.

4. Will Companies House Edinburgh accept notification of the resignation of a director (Form TM01) once a company has gone into liquidation?

Companies House Edinburgh will accept correctly completed Forms TM01 relating to the resignation of directors even if the company has gone into liquidation.

Any other queries relating to filing Forms TM01 should be referred to the contact centre at Companies House by contacting Companies House on 0303 1234 500.

5. What happens when I file an Order to stay a liquidation?

The Court may make an Order staying, or sisting (meaning, stopping) winding up proceedings, either altogether or for a limited period of time, pursuant to Section 112 and Section 147 of the Insolvency Act 1986.

The Order is to be sent to the Registrar of Companies for Scotland forthwith for entry onto the records relating to the company. The Registrar of Companies for Scotland records the Order onto the public records in the following ways:

- (i) The Order itself is placed on the public record for the company. It is listed as a 'miscellaneous' document on the list of documents received by the Registrar of Companies for Scotland.
- (ii) The Liquidation status flag is removed from the company's public record. A searcher will still be able to obtain a copy of the winding up order. In addition, the insolvency details can still be obtained from the insolvency section of the electronic search products.
- (iii) Once the stay Order has been recorded, any outstanding accounts and annual returns must be filed, as for any other live and active company. Failure to comply may result in the company being struck off the register.

6. My central heating has sprung a leak. The company is now in liquidation. Is my guarantee still valid?

Companies House is unable to answer this query. Please contact the liquidator.

7. How can I find out the name of the liquidator of a certain company?

This information is provided free on the Companies House web-site or by calling 0303 1234 500.

Chapter 9 Quality of documents

1. What happens to documents sent to Companies House Edinburgh?

The documents and forms you deliver to Companies House **Edinburgh** are scanned to produce an electronic image. The original documents are then stored, and the electronic image is used as the working document.

When your business contacts view the company record, they see the electronic image reproduced on-line. So it is important not only that the original is legible, but that it can also produce a clear copy.

Chapter 10 Further information

1. Where can I go for help?

Staff at Companies House Edinburgh and AIB will be able to advise you on general matters, but if you are considering liquidation or insolvency proceedings you should seek the advice of an insolvency practitioner or the Insolvency Service.

Complaints about the conduct of a licensed insolvency practitioner should be sent, in writing, to:

The Insolvency Practitioners' Section
The Insolvency Service
Area 1.10
PO Box 203
21 Bloomsbury Street
London, WC1B 3QW

Insolvency Service Contact Enquiry Line: 0845 602 9848

They will then forward the complaint to the practitioner's authorising body.

2. Where do I get forms and guidance?

This is one of a series of Companies House guidance, which provide a simple guide to the Companies Act.

On request, we can also provide guidance on related legislation. Titles include: 'Oversea Companies' (GPO1), 'Limited Partnership Act' (GPO2), 'European Economic Interest Groupings' (GPO4), and 'The European Company: Societas Europaea (SE)' (GPO6).

All statutory forms and guides are available free of charge from Companies House. The quickest way to get them is through our website or by telephoning 0303 1234 500.

Certain forms can be obtained from Companies House. All other forms can be obtained from the Accountant in Bankruptcy, The Insolvency Service or from company law stationers.

3. How do I send information to the Registrar of Companies for Scotland?

- Documents, including court orders, should display the correct company name and registration number, where appropriate;
- Companies House Edinburgh will only acknowledge receipt if you provide a stamped addressed envelope;
- You should supply documents in portrait format (that is, with the shorter edge across the top).

Documents may be delivered by post, by hand (personally or by courier), by the Document Exchange Service or by Legal Post (LP).

The relevant addresses are:

The Registrar of Companies
Companies House
Fourth Floor
Edinburgh Quay 2

The Accountant in Bankruptcy
1 Pennyburn Road
Kilwinning
KA13 6SA

139 Fountainbridge
Edinburgh, EH3 9FF

www.aib.gov.uk

DX ED235 Edinburgh 1
or
LP 4 Edinburgh -2

Please note: Companies House does not accept accounts or any other statutory documents by fax.

how to contact us

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contact centre: **0303 1234 500**

(For training and quality purposes your call may be monitored)

mini-com: 029 2038 1245

enquiries@companieshouse.gov.uk

www.companieshouse.gov.uk

- Cardiff:** Companies House
Crown Way, Cardiff CF14 3UZ
- Edinburgh:** Companies House
Fourth Floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, EH3 9FF
- London:** Companies House
21 Bloomsbury Street, London, WC1B 3XD
- Belfast:** Companies House,
Second Floor, The Linenhall,
32-38 Linenhall Street, Belfast, BT2 8BG

For the most up to date version of this booklet please visit our website at:

www.companieshouse.gov.uk



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