Loose & Griffiths on Liquidators

The Role of a Liquidator in a Winding Up

Eighth Edition

Peter Loose MA, Solicitor

Michael Griffiths LLM

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PREFACE

The first edition of this book appeared in 1972. Since then, we have seen periods of horrendous inflation with peaks and troughs of corporate insolvencies as recessions and booms have succeeded one another. In the midst of this activity, we saw first the 1981 Report of the Cork Committee (Cmnd 8558), then the Insolvency Acts of 1985 and 1986, the Company Directors Disqualification Act 1986 and a barrage of delegated legislation designed to put flesh on the bare bones of the primary statutes. Our third edition was published in 1989 and, of course, incorporated the legislation of the mid-1980s and some of the earlier decisions of the courts. This was, however, before the last two recessions had really taken their toll. While compulsory liquidations which totalled 5,200 in 1986 had fallen to 3,624 in 2013, creditors' voluntary liquidations which totalled 9,200 in 1986 had risen to 11,358. On top of this, administrations which hardly figured in the statistics in the 1980s had risen to nearly 5,000 in 2008, though they fell back to 2,365 in 2013.

Three editions ago we incorporated for the first time compulsory liquidations. Since then, there have been major legislative developments both at home and in Europe. The Insolvency Act 2000 introduced changes to the corporate voluntary arrangement procedure to facilitate the bringing about of a moratorium while an agreement was being reached with creditors. In 2013 there were 557 such arrangements recorded. The Act also allowed delinquent directors to give undertakings that they would not act as directors (as opposed to having a disqualification order made against them). Then the Enterprise Act 2002 provided that secured creditors should in future enforce their rights through the appointment of administrators responsible to all the creditors and members, rather than administrative receivers who were effectively responsible only to the secured creditors themselves. The Act also witnessed the most unlikely of events, the abandonment by the Treasury of its preferential status in insolvencies. The effect is that liquidators will generally have more money with which to sue, both to recover assets and to pursue directors who have wrongfully traded. These developments have all been incorporated into the text together with the 2000 EU Regulation on Insolvency Proceedings. There are now chapters included to cover both the EU Regulation and administrations.

Since the last edition the book has been updated to take into account analysis of a number of key cases including:

- *BNY Corporate Trustee Services v Eurosail* – the meaning of insolvency for the purposes of the winding up of an insolvent company;

- *HMRC v Football League and Football Association* – the football creditor rule which varies in particular circumstances under the standard order of payment of debts;

- *Re Stanford International Bank* – the centre of main interests for the purposes of cross-border insolvency;

- *Charalambous v B & C Associates* – the absence of a duty of care owed by an administrator to creditors in the absence of a special relationship.

There have been further amendments to insolvency by various pieces of secondary legislation. This tendency to change primary legislation by ministerial diktat has a number of consequences, none of which is of the slightest benefit to business.

There is no need to get the primary legislation right at the first drafting. It can easily be amended. The inevitable result is the risk of downright sloppy and ill-considered drafting.

Unlike an Act passing through both Houses, secondary legislation often goes through on the nod, not least because there is so much of it that Parliament cannot carry out proper scrutiny. By the same token, there is often inadequate consultation before the implementation of secondary legislation.

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PETER LOOSE
MICHAEL GRIFFITHS
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