

**ROLE OF**  
**OFFICIAL LIQUIDATOR IN**  
**WINDING UP**

Submitted  
by  
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## INTRODUCTION

In exercise of the powers conferred by Section 552 and clause (b) of the proviso to section 647, read with subsection (1) of section 642 of the Companies Act, 1956, the Central Government has framed the Companies (Official Liquidator's Accounts) Rules, 1965. The Official Liquidators are officers appointed by the Central Government under Section 448 of the Companies act and are attached to the various High Courts. The Official Liquidators are under the administrative charge of the respective Regional Directors who supervise their functioning. In the conduct of the winding up of the companies, however, Official Liquidators act under the directions of the High Courts. The Primary function of the Official liquidator is to administer the assets of companies under liquidation, sale of the assets and realization of all debts of companies in liquidation for the purpose of distributing the same among the various creditors and other shareholders of the companies and to finally dissolve such companies after the affairs are completely concluded. When a company is put to winding up by an order of the High Court, the Official Liquidator attached to the said High Court takes possession of the company's assets, books of accounts, etc. and liquidates the company as per the further orders of the High Court. The procedure of liquidation is prescribed under the Companies (Court) Rules, 1959. These rules are approved by the Honourable Supreme Court of India and notified by the Central Government.

## WHO CAN BE APPOINTED AS OFFICIAL LIQUIDATOR?

- A member from the panel of the professional firms of chartered accountants, advocates, company secretaries, cost and work accountants which the central government may constitute.
- Body corporate approved by central government.
- Whole-time or part-time officer appointed by the central government.

## ROLE OF OFFICIAL LIQUIDATOR

The role of official liquidator has been well discussed in various provision in the companies act 1956 and the Companies (Official Liquidator's Accounts) Rules, 1965.

Sections 448 to 463 of the companies act 1956 deals with the overall role of official liquidators in winding up proceedings. Let's have a sneak view of the provisions relating to liquidators:

<u>SECTION</u>	<u>MATTERS DEALING UNDER THE SAID SECTIONS</u>
448	APPOINTMENT OF OFFICIAL LIQUIDATOR
449	OFFICIAL LIQUIDATOR TO BE LIQUIDATOR
450	APPOINTMENT AND POWERS OF PROVISIONAL LIQUIDATOR
451	GENERAL PROVISIONS AS TO LIQUIDATORS
452	STYLE ETC OF LIQUIDATOR
453	RECEIVER NOT TO BE APPOINTED OF ASSETS WITH LIQUIDATOR
454	STATEMENT OF AFFAIRS TO BE MADE TO OFFICIAL LIQUIDATOR
455	REPORT BY OFFICIAL LIQUIDATOR
456	CUSTODY OF COMPANY'S PROPERTY
457	POWERS OF LIQUIDATOR
458	DISCRETION OF LIQUIDATOR

458A	EXCLUSION OF CERTAIN TIME IN COMPUTING PERIODS OF LIMITATION
459	PROVISION FOR LEGAL ASSISTANCE TO LIQUIDATOR
460	EXERCISE AND CONTROL OF LIQUIDATOR'S POWERS
461	BOOKS TO BE KEPT BY LIQUIDATOR
462	AUDIT OF LIQUIDATOR'S ACCOUNTS
463	CONTROL OF CENTRAL GOVERNMENT OVER LIQUIDATORS.

As per the Companies (Official Liquidator's Accounts) Rules, 1965, the liquidator has to comply with the following:

- The Official Liquidator shall maintain in his office separate account in respect of each company under his charge.
- The Official Liquidator shall also maintain a Central Cash Book to record all cash transactions; such other books as may be necessary to work out the periodical reconciliation of the balances in the official liquidators' account.
- Every Official Liquidator shall, with the approval of the Central Government, open a personal ledger account at the nearest branch or agency of the Reserve Bank to be called the "Official Liquidator's Account" which shall be a combined account in respect of all the companies under his charge.
- Payments made in cash and those made by cheque shall be remitted to the Reserve Bank under separate challans.
- The acknowledgment of the Reserve Bank shall be obtained for all moneys remitted into the Reserve Bank to the credit of the said account.

The Official Liquidator shall, at the end of every three months, examine the account of each company in his charge to ascertain what moneys are available for investment and record in the record book of the company the fact of his having examined the accounts, the decision taken by him regarding the investment, and in case he decides not to invest any surplus fund, the reasons for such decisions.

### **POWERS OF LIQUIDATOR IN WINDING UP**

#### **1. In compulsory winding up of a company:**

(a) As per section 457(1) of the Companies Act 1956, the liquidator has the following powers with the sanction of court:

- ➔ to institute and defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- ➔ to carry on the business of the company;
- ➔ to sell the immovable and movable property and actionable claims of the company by public auction or private contract;
- ➔ to raise on the security of assets of the company any money requisite;
- ➔ to do all such acts necessary for winding up the affairs of the company and distributing its assets.

(b) As per section 457(2) of the companies act 1956, the liquidator has the following powers without obtaining the sanction of court:

- to do all acts and to execute all deeds, receipts and documents in the name and on behalf of company and to use common seal of the company for that purpose;
- to inspect the records and returns of company;
- to prove, rank and claim in the insolvency of any company;
- to draw, accept, make and endorse any negotiable instruments in the name and on behalf of the company;
- to appoint an agent to do any business which the liquidator is unable to do himself.

## 2. In winding up subject to the supervision of court

As per section 546 of the companies act 1956, the liquidator has the following powers with the sanction of court:

- to pay any classes of creditors in full;
- to make any compromise or arrangement with the creditors to have any claim ascertained;
- to compromise any call, debt or liability.

## 3. In voluntary winding up of company

Voluntary liquidator may exercise the following powers with the sanction of special resolution in the case of members' voluntary winding up; with the sanction of court or committee of inspection in the case of creditors' voluntary winding up; with the sanction of creditors if there is no such committee:

- to institute and defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- to carry on the business of the company;
- to sell the immovable and movable property and actionable claims of the company by public auction or private contract;
- to raise on the security of assets of the company any money requisite.

The following powers can be exercised by him without any sanction:

- to do all acts and to execute all deeds ,receipts and documents in the name and on behalf of company and to use common seal of the company for that purpose;
- to inspect the records and returns of company;
- to prove, rank and claim in the insolvency of any company;
- to draw, accept, make and endorse any negotiable instruments in the name and on behalf of the company;
- to appoint an agent to do any business which the liquidator is unable to do himself;
- to exercise the power of court of settling the list of contributories;
- to exercise the power of court of making calls;
- to pay debts of company and adjust the rights of contributories among themselves.

## STATUS OF LIQUIDATOR

The status of liquidator has been discussed at various times through various judicial decisions held over the years. Some of the cases on the status, role and relevance of official liquidators and

various aspects of provisions relating to them has been enumerated below:

- RAMESHBHAI TANK v. OFFICIAL LIQUIDATOR OF VIJAY MILLS LTD. [(2008)

The applicants, who were the ex-employees of the company, were occupants of rooms situated on land owned by the company-in-liquidation. They filed the instant company application praying for setting aside the notices issued by the Official Liquidator calling upon them to hand over the premises belonging to the company-in-liquidation. But the applicants were not the tenants under any agreement and they were not in possession of the premises under a lease from the company. Also Court has power to order a former employee of a company in winding up, who still has in his possession the property of the company, to deliver possession thereof to the Official Liquidator. In view of this position, none of the applicants deserved any relief from the Court.

- L.K.Prabhu v.S.M.Ameerul Millath(2002)

Application under section 543(damages for misfeasance or misapplication) is maintainable against official liquidator as liquidator includes official liquidator. Moreover he is 'officer' of the company as defined in section 2(30) even if not specifically mentioned in the definition.

- Remupipes v IFCI(2002)

Ownership of assets of company in liquidation remains with the company but by a legal fiction the properties are taken to be vested in the court. Official liquidator takes properties under his control with the permission of court. He acts as custodian and a statutory trustee of those properties.

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