



Companies Act 1985

1985 CHAPTER 6

PART XX

WINDING UP OF COMPANIES REGISTERED UNDER THIS ACT OR THE FORMER COMPANIES ACTS

CHAPTER V

PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Offences of fraud, deception, etc., before and in course of winding up; fraudulent trading and its consequences

624 Fraud, etc. in anticipation of winding up

- (1) When a company is ordered to be wound up by the court, or passes a resolution for voluntary winding up, any person, being a past or present officer of the company, is deemed to have committed an offence if, within the 12 months immediately preceding the commencement of the winding up, he has—
- (a) concealed any part of the company's property to the value of £120 or more, or concealed any debt due to or from the company,
 - (b) fraudulently removed any part of the company's property to the value of £120 or more, or
 - (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or
 - (d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or
 - (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or
 - (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (2) Such a person is deemed to have committed an offence if within the period above mentioned he has been privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of subsection (1); and he commits an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in paragraphs (a) to (f) of that subsection, or is privy to the doing by others of any of the things mentioned in paragraphs (c) to (e) of it.
- (3) For purposes of this section, " officer " includes a shadow director.
- (4) It is a defence—
- (a) for a person charged under paragraph (a) or (f) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those paragraphs) to prove that he had no intent to defraud, and
 - (b) for a person charged under paragraph (c) or (d) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(f), every person who takes in pawn or pledge, or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances, is guilty of an offence.
- (6) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.
- (7) The money sums specified in paragraphs (a) and (b) of subsection (1) are subject to increase or reduction by regulations under section 664.

625 Transactions in fraud of creditors

- (1) When a company is ordered to be wound up by the court or passes a resolution for voluntary winding up, a person is deemed to have committed an offence if he, being at the time an officer of the company—
- (a) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property, or
 - (b) with that intent, has concealed or removed any part of the company's property since, or within 2 months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company.
- (2) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

626 Misconduct in course of winding up

- (1) When a company is being wound up, whether by or under the supervision of the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he—
- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (except such part as has been disposed of in the ordinary way of the company's business), or
- (b) does not deliver up to the liquidator (or as he directs) all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up, or
 - (c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
 - (d) knowing or believing that a false debt has been proved by any person in the winding up, fails for the period of a month to inform the liquidator of it, or
 - (e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company's property or affairs.
- (2) Such a person commits an offence if after the commencement of the winding up he attempts to account for any part of the company's property by fictitious losses or expenses; and he is deemed to have committed that offence if he has so attempted at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up.
- (3) For purposes of this section, " officer " includes a shadow director.
- (4) It is a defence—
- (a) for a person charged under paragraph (a), (b) or (c) of subsection (1) to prove that he had no intent to defraud, and
 - (b) for a person charged under paragraph (e) of that subsection to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (5) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

627 Falsification of company's books

- (1) When a company is being wound up, an officer or contributory of the company commits an offence if he destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person.
- (2) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

628 Material omissions from statements relating to company affairs

- (1) When a company is being wound up, whether by or under the supervision of the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he makes any material omission in any statement relating to the company's affairs.
- (2) When a company has been ordered to be wound up by the court, or has passed a resolution for voluntary winding up, any such person is deemed to have committed that offence if, prior to the winding up, he has made any material omission in any such statement.
- (3) For purposes of this section, " officer" includes a shadow director.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (4) It is a defence for a person charged under this section to prove that he had no intent to defraud.
- (5) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

629 False representations to creditors

- (1) When a company is being wound up, whether by or under the supervision of the court or voluntarily, any person, being a past or present officer of the company—
 - (a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up, and
 - (b) is deemed to have committed that offence if, prior to the winding up, he has made any false representation, or committed any other fraud, for that purpose.
- (2) For purposes of this section, " officer" includes a shadow director.
- (3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

630 Responsibility of individuals for company's fraudulent trading

- (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.
- (2) The court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any persons who were knowingly parties to the carrying on of the business in the manner above mentioned are to be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.
- (3) On the hearing of the application, the official receiver or the liquidator (as the case may be) may himself give evidence or call witnesses.
- (4) Where the court makes such a declaration, it may give such further directions as it thinks proper for giving effect to the declaration ; and in particular, the court may—
 - (a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and
 - (b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.
- (5) For purposes of subsection (4), " assignee "—
 - (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.
- (6) This section has effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under subsection (2) is to be made; and where the declaration is made in the case of a winding up in England and Wales, it is deemed a final judgment within section 1(1)(g) of the Bankruptcy Act 1914.

631 Assessment of damages against delinquent directors, etc.

- (1) The following applies if in the course of winding up a company it appears that a person who has taken part in its formation or promotion, or any past or present director, manager or liquidator, or an officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company.
- (2) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer and compel him—
 - (a) to repay or restore the money or property, or any part of it, respectively with interest at such rate as the court thinks just, or
 - (b) to contribute such sum to the company's assets by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just
- (3) This section has effect notwithstanding that the offence is one for which the offender may be criminally liable.
- (4) If in the case of a winding up in England and Wales an order for payment of money is made under this section, the order is deemed a final judgment within section 1(1)(g) of the Bankruptcy Act 1914.

632 Prosecution of delinquent officers and members of company

- (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter to the prosecuting authority.
- (2) " The prosecuting authority " means—
 - (a) in the case of a winding up in England and Wales, the Director of Public Prosecutions, and
 - (b) in the case of a winding up in Scotland, the Lord Advocate.
- (3) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, he shall—
 - (a) forthwith report the matter to the prosecuting authority, and
 - (b) furnish to that authority such information and give to him such access to and facilities for inspecting and taking copies of documents (being information or

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

documents in the possession or under the control of the liquidator and relating to the matter in question) as the authority requires.

- (4) Where a report is made to him under subsection (3), the prosecuting authority may, if he thinks fit, refer the matter to the Secretary of State for further enquiry ; and the Secretary of State—
- (a) shall thereupon investigate the matter, and
 - (b) for the purpose of his investigation may exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 to investigate a company's affairs.
- (5) If it appears to the court in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty as above-mentioned, and that no report with respect to the matter has been made by the liquidator to the prosecuting authority under subsection (3), the court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report; and on a report being made accordingly this section has effect as though the report had been made in pursuance of subsection (3).

633 Obligations arising under s. 632

- (1) For the purpose of an investigation by the Secretary of State under section 632(4), any obligation imposed on a person by any provision of this Act to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that subsection is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.
- (2) An answer given by a person to a question put to him in exercise of the powers conferred by section 632(4) may be used in evidence against him.
- (3) Where criminal proceedings are instituted by the prosecuting authority or the Secretary of State following any report or reference under section 632, it is the duty of the liquidator and every officer and agent of the company past and present (other than the defendant or defender) to give to that authority or the Secretary of State (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose " agent" includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (4) If a person fails or neglects to give assistance in the manner required by subsection (3), the court may, on the application of the prosecuting authority or the Secretary of State (as the case may be) direct the person to comply with that subsection; and if the application is made with respect to a liquidator, the court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.