



# Insolvency Act 1985

## 1985 CHAPTER 65

### PART IV

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Other supplemental provisions*

#### **230 Offences by bodies corporate**

- (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### **231 Admissibility of statements of affairs etc.**

In any proceedings (whether or not under this Act), any statement of affairs prepared for the purposes of any provision of this Act and any other statement made in pursuance of a requirement imposed by or under this Act or rules made under this Act may be used in evidence against any person making or concurring in making it.

#### **232 Interpretation**

In this Act, except in so far as the context otherwise requires—

- " the 1985 Act " means the Companies Act 1985 ;
- " associate " shall be construed in accordance with section 233 below;
- " business " includes a trade or profession;

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" conditional sale agreement" and " hire-purchase agreement " have the same meanings as in the Consumer Credit Act 1974;

" modifications " includes additions, alterations and omissions and cognate expressions shall be construed accordingly ;

" property " includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

" records " includes computer records and other non-documentary records;

" standard scale " has the meaning given by section 75 of the Criminal Justice Act 1982 ;

" statutory maximum " has the meaning given by section 74 of the Criminal Justice Act 1982;

" subordinate legislation " has the same meaning as in the Interpretation Act 1978;

" transaction" includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

### **233 Meaning of " associate "**

- (1) For the purposes of this Act any question whether a person is an associate of another person shall be determined, in accordance with the following provisions of this section (any provision that a person is an associate of another person being taken to mean that they are associates of each other).
- (2) A person is an associate of an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.
- (3) A person is an associate of any person with whom he is in partnership, and of the husband or wife or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm.
- (4) A person is an associate of any person whom he employs or by whom he is employed.
- (5) A person in his capacity as trustee of a trust other than—
  - (a) a trust arising under Part III of this Act or the Bankruptcy (Scotland) Act 1985 ; or
  - (b) a pension scheme or an employees' share scheme (within the meaning of the 1985 Act),
 is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.
- (6) A company is an associate of another company—
  - (a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other; or
  - (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

- (7) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.
- (8) For the purposes of this section a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—
- (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child; and
  - (b) an illegitimate child as the legitimate child of his mother and reputed father ;
- and references in this section to a husband or wife include a former husband or wife and a reputed husband or wife.
- (9) For the purposes of this section any director or other officer of a company shall be treated as employed by that company.
- (10) For the purposes of this section a person shall be taken to have control of a company if—
- (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions ; or
  - (b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it;
- and where two or more persons together satisfy either of the above conditions, they shall be taken to have control of the company.
- (11) In this section " company " includes any body corporate (whether incorporated in Great Britain or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company shall have effect with any necessary modifications.

#### **234 Crown application**

For the avoidance of doubt it is hereby declared that this Act binds the Crown so far as it affects or relates to the following matters, namely—

- (a) remedies against, or against the property of, companies or individuals;
- (b) priorities of debts ;
- (c) transactions at an undervalue or preferences ;
- (d) compositions or schemes approved under Chapter II of Part II or Chapter I of Part III; and
- (e) discharge from bankruptcy.

#### **235 Consequential amendments, transitional provisions, savings and repeals**

- (1) The enactments mentioned in Schedule 8 to this Act shall have effect with the amendments there specified (being amendments consequential on the provisions of this Act).
- (2) The transitional provisions and savings contained in Schedule 9 to this Act shall have effect, but those provisions and savings are without prejudice to sections 16 and 17 of the Interpretation Act 1978 (effect of repeals).

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- (3) The enactments mentioned in Schedule 10 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The Lord Chancellor may by order make such consequential modifications of any provision contained in any subordinate legislation made before the coming into force of Part III of this Act and such transitional provisions in connection with those modifications as appear to him necessary or expedient in respect of—
  - (a) any reference in that subordinate legislation to the Bankruptcy Act 1914;
  - (b) any reference in that subordinate legislation to any enactment repealed by Part III or IV of Schedule 10 to this Act; or
  - (c) any reference in that subordinate legislation to any matter provided for under the said Act of 1914 or under any enactment so repealed.
- (5) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### **236 Short title, commencement and extent**

- (1) This Act may be cited as the Insolvency Act 1985.
- (2) This Act shall come into force on such day as the Secretary of State may, by order made by statutory instrument, appoint; and different days may be so appointed for different purposes and for different provisions.
- (3) The following provisions of this Act do not extend to Scotland—
  - (a) section 49;
  - (b) sections 101 and 102;
  - (c) section 105;
  - (d) Part III;
  - (e) section 212;
  - (f) section 215;
  - (g) section 220;
  - (h) section 221(1);
  - (i) sections 222 to 228 ;
  - (j) Schedule 8 so far as it amends enactments that extend to England and Wales only ;
  - (k) Parts III and IV of Schedule 9 ; and
  - (l) Part III of Schedule 10.
- (4) This Act, with the exception of this section and of—
  - (a) section 213 ;
  - (b) section 214;
  - (c) section 217;
  - (d) section 219;
  - (e) paragraph 6 of Schedule 1;
  - (f) so much of section 235 and Schedule 8 as relates to enactments which extend to Northern Ireland ; and
  - (g) so much of section 235 and Part IV of Schedule 10 as relates to the Irish Bankrupt and Insolvent Act 1857, the Bankruptcy Disqualification Act 1871, the Bankruptcy (Ireland) Amendment Act 1872, the Bankruptcy Act 1883,

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the Bankruptcy Act 1914, the Criminal Law Act 1977, the Civil Jurisdiction and Judgments Act 1982, section 570 of the Companies Act 1985 and the Companies Act (Northern Ireland) 1960,

does not extend to Northern Ireland.

- (5) Her Majesty may, by Order in Council, direct that such of the provisions of this Act as are specified in the Order shall extend to any of the Channel Islands or any colony with such modifications as may be so specified.