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# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

#### WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

#### CHAPTER I

#### PRELIMINARY

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##### Modifications etc. (not altering text)

- C1** Pt. 4 Ch. 1 excluded (E.W.) (31.1.2019) by [The Further Education Bodies \(Insolvency\) Regulations 2019 \(S.I. 2019/138\)](#), regs. 1(1), **9** (with regs. 1(2), 3(a)(ii))
- C2** Pt. 4 applied (with modifications) (S.) by [S.S.I. 2001/128](#), reg. 4, Schs. 2, **3** (as modified) (temp.) (retrospective to 27.4.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), Sch. 10 paras. 8(1)(2), **14** (with ss. 2(2), 5(2))

*[<sup>F1</sup>Introductory]*

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##### Textual Amendments

- F1** S. 73 and cross-heading substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009, \(S.I. 2009/1941\)](#) arts. 2(1), 8, {Sch. 1 para. 75(2)} (with art. 10, Sch. 1 para. 84)

#### <sup>F2</sup>73 Scheme of this Part

- (1) This Part applies to the winding up of a company registered under the Companies Act 2006 in England and Wales or Scotland.
- (2) The winding up may be either—

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- (a) voluntary (see Chapters 2 to 5), or
  - (b) by the court (see Chapter 6).
- (3) This Chapter and Chapters 7 to 10 relate to winding up generally, except where otherwise stated.]

#### **Textual Amendments**

- F2** S. 73 and cross-heading substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(2)} (with art. 10, Sch. 1 para. 84)

### *Contributories*

#### **74 Liability as contributories of present and past members.**

- (1) When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.
- (2) This is subject as follows—
  - (a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
  - (b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
  - (c) a past member is not liable to contribute, unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them<sup>F3</sup>. . . ;
  - (d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;
  - (e) nothing in [<sup>F4</sup>the Companies Acts] or this Act invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
  - (f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.
- (3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him.

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#### Textual Amendments

- F3** Words in s. 74(2)(c) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, [Sch. 1 para. 75\(3\)\(a\)](#) (with art. 10, Sch. 1 para. 84)
- F4** Words in s. 74(2)(e) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, [Sch. 1 para. 75\(3\)\(b\)](#) (with art. 10, Sch. 1 para. 84)

#### Modifications etc. (not altering text)

- C3** S. 74(2)(a) modified (temp.) (retrospective to 27.4.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), [Sch. 10 paras. 8\(1\)\(2\), 10](#) (with ss. 2(2), 5(2))

### 75 Directors, etc. with unlimited liability.

**F5** .....

#### Textual Amendments

- F5** S. 75 omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009, \(S.I. 2009/1941\)](#) arts. 2(1), 8, {[Sch. 1 para. 75\(4\)](#)} (with arts. 9, 10, Sch. 1 para. 84)

### 76 Liability of past directors and shareholders.

- (1) This section applies where a company is being wound up and—
- it has under [<sup>F6</sup>Chapter 5 of Part 18 of the Companies Act 2006 (acquisition by limited company of its own shares: redemption or purchase by private company out of capital)] made a payment out of capital in respect of the redemption or purchase of any of its own shares (the payment being referred to below as “the relevant payment”), and
  - the aggregate amount of the company’s assets and the amounts paid by way of contribution to its assets (apart from this section) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.
- (2) If the winding up commenced within one year of the date on which the relevant payment was made, then—
- the person from whom the shares were redeemed or purchased, and
  - the directors who signed the [<sup>F7</sup>statement] made in accordance with [<sup>F8</sup>section 714(1) to (3) of the Companies Act 2006] for purposes of the redemption or purchase (except a director who shows that he had reasonable grounds for forming the opinion set out in the [<sup>F7</sup>statement],
- are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company’s assets.
- (3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.

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- (4) A person who has contributed any amount to the assets in pursuance of this section may apply to the court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the court thinks just and equitable.
- (5) [<sup>F9</sup>Section 74 does not apply] in relation to liability accruing by virtue of this section.
- (6) <sup>F10</sup> . . . . .

#### Textual Amendments

- F6** Words in s. 76(1)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 75(5)(a)** (with art. 10, Sch. 1 para. 84)
- F7** Words in s. 76(2)(b) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **6(3)**
- F8** Words in s. 76(2)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 75(5)(b)** (with art. 10, Sch. 1 para. 84)
- F9** Words in s. 76(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 75(5)(c)** (with art. 10, Sch. 1 para. 84)
- F10** S. 76(6) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 75(5)(d)** (with art. 10, Sch. 1 para. 84)

#### 77 Limited company formerly unlimited.

- (1) This section applies in the case of a company being wound up which was at some former time registered as unlimited but has [<sup>F11</sup>re-registered as a limited company.]
- (2) Notwithstanding section 74(2)(a) above, a past member of the company who was a member of it at the time of re-registration, if the winding up commences within the period of 3 years beginning with the day on which the company was re-registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.
- (3) If no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as above notwithstanding that the existing members have satisfied the contributions required to be made by them <sup>F12</sup> . . .

This applies subject to section 74(2)(a) above and to subsection (2) of this section, but notwithstanding section 74(2)(c).

- (4) Notwithstanding section 74(2)(d) and (3), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as above.

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#### Textual Amendments

- F11** Words in s. 77(1) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, **Sch. 1 para. 75(6)(a)** (with art. 10, Sch. 1 para. 84)
- F12** Words in s. 77(3) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, **Sch. 1 para. 75(6)(b)** (with art. 10, Sch. 1 para. 84)

### 78 Unlimited company formerly limited.

- (1) This section applies in the case of a company being wound up which was at some former time registered as limited but has been re-registered as unlimited<sup>F13</sup>. . . .
- (2) A person who, at the time when the application for the company to be re-registered was lodged, was a past member of the company and did not after that again become a member of it is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been re-registered.

#### Textual Amendments

- F13** Words in s. 78(1) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, **Sch. 1 para. 75(7)** (with art. 10, Sch. 1 para. 84)

### 79 Meaning of “contributory”.

- (1) In this Act<sup>F14</sup>. . . the expression “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.
- (2) The reference in subsection (1) to persons liable to contribute to the assets does not include a person so liable by virtue of a declaration by the court under section 213 (imputed responsibility for company’s fraudulent trading) or section 214 (wrongful trading) in Chapter X of this Part.
- (3) A reference in a company’s articles to a contributory does not (unless the context requires) include a person who is a contributory only by virtue of section 76.

<sup>F15</sup> . . . . .

#### Textual Amendments

- F14** Words in s. 79(1) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, **Sch. 1 para. 75(8)(a)** (with art. 10, Sch. 1 para. 84)
- F15** Words in s. 79(3) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, **Sch. 1 para. 75(8)(b)** (with art. 10, Sch. 1 para. 84)

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## 80 Nature of contributory's liability.

The liability of a contributory creates a debt (in England and Wales in the nature of [F16an ordinary contract debt]) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

### Textual Amendments

**F16** Words in s. 80 substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, [Sch. 1 para. 75\(9\)](#) (with art. 10, [Sch. 1 para. 84](#))

## 81 Contributories in case of death of a member.

- (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, are liable in a due course of administration to contribute to the assets of the company in discharge of his liability and are contributories accordingly.
- (2) Where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not be added, but they may be added as and when the court thinks fit.
- (3) If in England and Wales the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

## 82 Effect of contributory's bankruptcy.

- (1) The following applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.
- (2) His trustee in bankruptcy represents him for all purposes of the winding up, and is a contributory accordingly.
- (3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets.
- (4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

## 83 [F17Companies registered but not formed under the Companies Act 2006]

- (1) The following applies in the event of a company being wound up which [F18is registered but not formed under the Companies Act 2006.].
- (2) Every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable—
  - (a) to pay, or contribute to the payment of, any debt or liability so contracted, or

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- (b) to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or
  - (c) to pay, or contribute to the amount of, the expenses of winding up the company, so far as relates to the debts or liabilities above mentioned.
- (3) Every contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability.
- (4) In the event of the death, bankruptcy or insolvency of any contributory, provisions of this Act, with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories and to the trustees of bankrupt or insolvent contributories respectively, apply.

#### **Textual Amendments**

- F17** S. 83 heading substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(10)(a)} (with art. 10, Sch. 1 para. 84)
- F18** Words in s. 83(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 75(10)(b)** (with art. 10, Sch. 1 para. 84)

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