



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

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

### CHAPTER X

#### MALPRACTICE BEFORE AND DURING LIQUIDATION; PENALISATION OF COMPANIES AND COMPANY OFFICERS; INVESTIGATIONS AND PROSECUTIONS

#### *Penalisation of directors and officers*

#### **212 Summary remedy against delinquent directors, liquidators, etc.**

- (1) This section applies if in the course of the winding up of a company it appears that a person who—
- (a) is or has been an officer of the company,
  - (b) has acted as liquidator<sup>F1</sup> . . . or administrative receiver of the company, or
  - (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,
- has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.
- (2) The reference in subsection (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator<sup>F2</sup> . . . of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator<sup>F2</sup> . . . of the company.

*Status: Point in time view as at 06/06/2013.*

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- (3) 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 person falling within subsection (1) and compel him—
- (a) to repay, restore or account for the money or property or any part of it, 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 misfeasance or breach of fiduciary or other duty as the court thinks just.
- (4) The power to make an application under subsection (3) in relation to a person who has acted as liquidator<sup>F3</sup> . . . of the company is not exercisable, except with the leave of the court, after [F4he] has had his release.
- (5) The power of a contributory to make an application under subsection (3) is not exercisable except with the leave of the court, but is exercisable notwithstanding that he will not benefit from any order the court may make on the application.

#### Textual Amendments

- F1** Word in s. 212(1)(b) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 18(a), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F2** Words in s. 212(2) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 18(b), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F3** Words in s. 212(4) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 18(c)(i), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F4** Word in s. 212(4) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 18(c)(ii) (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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

- C1** S. 212 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 4(2)(3)  
 S. 212 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2  
 S. 212 applied (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), reg. 31 (with reg. 3)  
 S. 212 applied (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), reg. 31 (with reg. 3) (as modified (10.8.2005) by S.I. 2005/1998, regs. 2(3), 40(1)-(4)(10))
- C2** S. 212 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 103, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2
- C3** S. 212 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

## 213 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.

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- (2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

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

- C4** S. 213 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)
- C5** S. 213 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)
- C6** S. 213 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)
- C7** S. 213 applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table \(with reg. 24\)](#)

**214 Wrongful trading.**

- (1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) of this section applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.
- (2) This subsection applies in relation to a person if—
- the company has gone into insolvent liquidation,
  - at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and
  - that person was a director of the company at that time;
- but the court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) above was before 28th April 1986.
- (3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.
- (4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—
- the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
  - the general knowledge, skill and experience that that director has.

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- (5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.
- (6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (7) In this section “director” includes a shadow director.
- (8) This section is without prejudice to section 213.

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

- C8** S. 214 modified (7.10.2008 at 9.30 a.m.) ) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 3(a)**
- C9** S. 214 modified (29.9.2008 at 8.00 a.m.) ) by The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13, **Sch. 1 para. 3(a)**
- C10** S. 214 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 3(a)**
- C11** S. 214 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**
- C12** S. 214 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, Sch. para. 2
- C13** S. 214 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, Sch. para. 3
- C14** S. 214 modified (30.3.2009 at 8.00 a.m.) by The Amendments to [Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), art. 7, **Sch. 1 para. 3(a)**
- C15** S. 214 applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), Pt. 3reg. 1, Sch. 2 paras. 3, **5** Table (with reg. 24)
- C16** S. 214(2) modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(2), **Sch. 3**
- C17** S. 214(4) applied (6.4.2005) by [The Pensions Regulator \(Notifiable Events\) Regulations 2005 \(S.I. 2005/900\)](#), **reg. 2(2)(c)**

**215 Proceedings under ss. 213, 214.**

- (1) On the hearing of an application under section 213 or 214, the liquidator may himself give evidence or call witnesses.
- (2) Where under either section the court makes 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.
- (3) For the purposes of subsection (2), “assignee”—

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- (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
  - (b) does not include an assignee for valuable consideration (not including consideration by way of marriage [<sup>F5</sup>or the formation of a civil partnership]) given in good faith and without notice of any of the matters on the ground of which the declaration is made.
- (4) Where the court makes a declaration under either section in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.
- (5) Sections 213 and 214 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

#### Textual Amendments

- F5** Words in s. 215(3)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 112](#); [S.I. 2005/3175](#), [art. 2\(2\)](#) (subject to [art. 2\(3\)-\(5\)](#))

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

- C18** S. 215 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)
- C19** S. 215 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), ss. 103, 263(1)(2) (with s. 247); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 2](#)
- C20** S. 215 applied (with modifications) (S.) (25.2.2009) by [The Bank Administration \(Scotland\) Rules 2009 \(S.I. 2009/350\)](#), [rule 38](#)
- C21** S. 215 modified (S.) (29.3.2009 at 4.00pm) by [The Building Society Special Administration \(Scotland\) Rules 2009 \(S.I. 2009/806\)](#), [rule 37](#)
- C22** S. 215 applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), Pt. 3reg. 1, [Sch. 2 paras. 3, 5](#) Table (with [reg. 24](#))
- C23** S. 215(1)(2)(4)(5) modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(2\)](#), [Sch. 3](#)

## 216 Restriction on re-use of company names.

- (1) This section applies to a person where a company (“the liquidating company”) has gone into insolvent liquidation on or after the appointed day and he was a director or shadow director of the company at any time in the period of 12 months ending with the day before it went into liquidation.
- (2) For the purposes of this section, a name is a prohibited name in relation to such a person if—
  - (a) it is a name by which the liquidating company was known at any time in that period of 12 months, or
  - (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company.
- (3) Except with leave of the court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of 5 years beginning with the day on which the liquidating company went into liquidation—

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- (a) be a director of any other company that is known by a prohibited name, or
  - (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or
  - (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.
- (4) If a person acts in contravention of this section, he is liable to imprisonment or a fine, or both.
- (5) In subsection (3) “the court” means any court having jurisdiction to wind up companies; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.
- (6) References in this section, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.
- (7) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (8) In this section “company” includes a company which may be wound up under Part V of this Act.

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

**C24** S. 216 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), ss. **103**, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2

**217 Personal liability for debts, following contravention of s. 216.**

- (1) A person is personally responsible for all the relevant debts of a company if at any time—
- (a) in contravention of section 216, he is involved in the management of the company, or
  - (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the court) by a person whom he knows at that time to be in contravention in relation to the company of section 216.
- (2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.
- (3) For the purposes of this section the relevant debts of a company are—
- (a) in relation to a person who is personally responsible under paragraph (a) of subsection (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
  - (b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred

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at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.

- (4) For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the leave of the court) by a person whom he knew at that time to be in contravention in relation to the company of section 216 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.
- (6) In this section “company” includes a company which may be wound up under Part V.

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

**C25** S. 217 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

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