



# Insolvency Act 1986

## 1986 CHAPTER 45

The First Group of Parts Company Insolvency ; Companies Winding Up

### 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

*Offences of fraud, deception, etc.*

#### **206 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, or
  - (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).

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- (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 two 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 order under section 416 in Part XV.

## **207 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) 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) 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 is not guilty of an offence under this section—
- (a) by reason of conduct constituting an offence under subsection (1)(a) which occurred more than 5 years before the commencement of the winding up, or
  - (b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.
- (3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

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## **208 Misconduct in course of winding up**

- (1) When a company is being wound up, whether by 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 (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 die winding up, fails to inform the liquidator as soon as practicable, 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.

## **209 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.

## **210 Material omissions from statement relating to company's affairs**

- (1) When a company is being wound up, whether by 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.

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- (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.
- (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.

## **211 False representations to creditors**

- (1) When a company is being wound up, whether by 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.