

---

*Status: Point in time view as at 12/05/2011.*

*Changes to legislation: The Insolvency (Northern Ireland) Order 1989, Cross Heading: Offences of fraud, deception, etc. is up to date with all changes known to be in force on or before 13 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

---

## STATUTORY INSTRUMENTS

---

# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### <sup>F1</sup>PART V

#### WINDING UP OF COMPANIES REGISTERED UNDER [<sup>F1</sup>the Companies Act 2006]

#### CHAPTER X

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

*Offences of fraud, deception, etc.*

#### **Fraud, etc., in anticipation of winding up**

**170.**—(1 <sup>F1</sup> When a company is ordered to be wound up by the High Court, or passes a resolution for voluntary winding up, any person who, being a past or present officer of the company, has, within the 12 months immediately preceding the commencement of the winding up—

- (a) concealed any part of the company's property to the value of £500 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 £500 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),

shall be guilty of an offence.

(2) Such a person as is mentioned in paragraph (1) shall be guilty of an offence if within the period mentioned in that paragraph he has been privy to the doing by others of any of the things mentioned in sub#paragraphs (c), (d) and (e) of that paragraph; and he shall be guilty of an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in sub#paragraphs (a) to (f) of that paragraph, or is privy to the doing by others of any of the things mentioned in sub#paragraphs (c) to (e) of that paragraph.

(3) For the purposes of this Article, “officer” includes a shadow director.

(4) It is a defence—

*Status: Point in time view as at 12/05/2011.*

*Changes to legislation: The Insolvency (Northern Ireland) Order 1989, Cross Heading: Offences of fraud, deception, etc. is up to date with all changes known to be in force on or before 13 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) for a person charged under sub#paragraph (a) or (f) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub#paragraphs) to prove that he had no intent to defraud, and
  - (b) for a person charged under sub#paragraph (c) or (d) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub#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 paragraph (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, shall be guilty of an offence and shall, on conviction on indictment, be liable to the same penalty as if he had been convicted of handling stolen goods.
- (6) The money sums specified in sub#paragraphs (a) and (b) of paragraph (1) are subject to increase or reduction by order under Article 362(1)(a).

**F1** mod. by SR 2004/307

### Transactions in fraud of creditors

**171.**—(1 <sup>F2</sup> When a company is ordered to be wound up by the High Court or passes a resolution for voluntary winding up, a person who, being at the time an officer of the company,—

- (a) within the 5 years immediately preceding the commencement of the winding up, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the enforcement of a judgment against, the company's property, or
- (b) has concealed or removed any part of the company's property since, or within the 2 months immediately preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the company,

shall be guilty of an offence.

(2) It is a defence for a person charged under paragraph (1) to prove that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

**F2** mod. by SR 2004/307

### Misconduct in course of winding up

**172.**—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

- (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 the 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,  
shall be guilty of an offence.

(2) Any person mentioned in paragraph (1) who, after the commencement of the winding up, attempts to account for any part of the company's property by fictitious losses or expenses shall be guilty of an offence; and if he so attempts at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up he shall be guilty of an offence.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence—

(a) for a person charged under sub#paragraph (a), (b) or (c) of paragraph (1) to prove that he had no intent to defraud, and

(b) for a person charged under sub#paragraph (e) of that paragraph to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

### **Falsification of company's books**

**173.** When a company is being wound up, an officer or contributory of the company who 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, accounting records or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence.

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

**174.—**(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company, makes any material omission in any statement relating to the company's affairs shall be guilty of an offence.

(2) <sup>F3</sup> When a company has been ordered to be wound up by the High Court, or has passed a resolution for voluntary winding up, any person mentioned in paragraph (1) who, prior to the winding up, has made any material omission in any such statement shall be guilty of an offence.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence for a person charged under this Article to prove that he had no intent to defraud.

**F3** mod. by SR 2004/307

### **False representations to creditors**

**175.—**(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

(a) 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; or

(b) prior to the winding up, has made any false representation, or committed any other fraud, for the purpose mentioned in sub#paragraph (a);

shall be guilty of an offence.

(2) For the purposes of this Article, "officer" includes a shadow director.

**Status:**

Point in time view as at 12/05/2011.

**Changes to legislation:**

The Insolvency (Northern Ireland) Order 1989, Cross Heading: Offences of fraud, deception, etc. is up to date with all changes known to be in force on or before 13 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.