



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER I

DISQUALIFICATION AND PERSONAL LIABILITY OF DIRECTORS AND OTHERS

12 Duty of court to disqualify unfit directors of insolvent companies

- (1) The court shall make a disqualification order against a person in any case where, on an application under this section, the court is satisfied—
 - (a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently); and
 - (b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.
- (2) The period specified as the period of the disqualification in a disqualification order made under this section shall not be less than two years.
- (3) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under this section should be made against any person, an application for the making of such an order against that person may be made—
 - (a) by the Secretary of State ; or
 - (b) if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being wound up by the court in England and Wales, by the official receiver.
- (4) Except with the leave of the court, an application for the making under this section of a disqualification order against any person shall not be made after the end of the period

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of two years beginning with the day on which the company of which that person is or has been a director became insolvent.

(5) If—

- (a) in the case of a person who is or has been a director of a company which is being wound up by the court in England and Wales, it appears to the official receiver;
- (b) in the case of a person who is or has been a director of a company which is being wound up otherwise than as mentioned in paragraph (a) above, it appears to the liquidator;
- (c) in the case of a person who is or has been a director of a company in relation to which an administration order is in force, it appears to the administrator ; or
- (d) in the case of a person who is or has been a director of a company of which there is an administrative receiver, it appears to that receiver,

that the conditions mentioned in subsection (1) above are satisfied as respects that person, the official receiver, the liquidator, the administrator or, as the case may be, the administrative receiver, shall forthwith report the matter to the Secretary of State.

(6) The Secretary of State or the official receiver may require the liquidator, administrator or administrative receiver of a company or the former liquidator, administrator or administrative receiver of a company—

- (a) to furnish him with such information with respect to any person's conduct as a director of the company; and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

(7) For the purposes of this section a company becomes insolvent if—

- (a) the company 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;
- (b) an administration order is made in relation to the company ; or
- (c) an administrative receiver of the company is appointed,

and references in this section to a person's conduct as a director of any company or companies include, where that company or any of those companies has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(8) In this section " the court" means—

- (a) in the case of a person who is or has been a director of a company which is being wound up by the court, the court by which the company is being wound up ;
- (b) in the case of a person who is or has been a director of a company which is being wound up voluntarily, any court having jurisdiction to wind up the company;
- (c) in the case of a person who is or has been a director of a company in relation to which an administration order is in force, the court by which that order was made; and
- (d) in any other case, the High Court or, in Scotland, the Court of Session.

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- (9) In this section and sections 13 to 15 below "director" includes a shadow director within the meaning given by section 741(2) of the 1985 Act.

13 Disqualification after investigation of company

- (1) If it appears to the Secretary of State from a report made by inspectors under section 437 of the 1985 Act, or from information or documents obtained under section 447 or 448 of that Act, that it is expedient in the public interest that a disqualification order should be made against any person who is or has been a director of any company, he may apply to the court for such an order to be made against that person.
- (2) The court may make a disqualification order against a person where, on an application under this section, the court is satisfied that his conduct in relation to the company makes him unfit to be concerned in the management of a company.
- (3) In this section "the court" means the High Court or, in Scotland, the Court of Session.

14 Matters for determining unfitness of directors

- (1) Where it falls to a court to determine whether a person's conduct as a director of any particular company or companies makes him unfit as mentioned in section 12(1) or 13(2) above, the court shall, as respects his conduct as a director of that company or, as the case may be, each of those companies, have regard in particular—
- (a) to the matters mentioned in Part I of Schedule 2 to this Act; and
 - (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule ;
- and references in that Schedule to the director and to the company shall be construed accordingly.
- (2) Subsection (7) of section 12 above applies for the purposes of this section and Schedule 2 to this Act as it applies for the purposes of that section.
- (3) Subject to subsection (4) below, any reference in Schedule 2 to this Act to any enactment contained in the 1985 Act or this Act shall include, in relation to any time before the Coming into force of that enactment, a reference to the corresponding enactment in force at that time.
- (4) The Secretary of State may by order modify any of the provisions of Schedule 2 to this Act; and such an order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
- (5) The power to make orders under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

15 Responsibility for company's wrongful trading

- (1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) below 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.

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- (2) This subsection applies in relation to a person if—
- (a) the company has gone into insolvent liquidation ;
 - (b) 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
 - (c) that person was a director of the company at that time.
- (3) The court shall not make a declaration under subsection (1) above with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) above 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) above 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—
- (a) 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
 - (b) the general knowledge, skill and experience that that director has.
- (5) The reference in subsection (4) above to the functions carried out in relation to a company by a director of the company includes a reference to any functions which he does not carry out but which have been entrusted to him.
- (6) Subsections (3) to (6) of section 630 of the 1985 Act (responsibility for company's fraudulent trading) shall have effect in relation to a declaration under subsection (1) above as they have effect in relation to a declaration under subsection (2) of that section, and this section is without prejudice to that section.
- (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.

16 Disqualification of persons held to be liable to contribute to company's assets

Where a court makes a declaration under section 15 above or section 630 of the 1985 Act that any person is to be liable to make a contribution to a company's assets, then, whether or not an application for such an order is made by any person, the court may, if it thinks fit, also make a disqualification order against the person to whom the declaration relates.

17 Restriction on use of company names

- (1) This section applies to a person where a company (" the relevant company ") has gone into insolvent liquidation and he was a director or shadow director of the company at any time in the period of twelve months ending with the day before it went into liquidation; and for the purposes of this section a name is a prohibited name in relation to such a person if—

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- (a) it is a name by which the relevant company was known at any time in the said period; or
 - (b) it is a name which is so similar to a name falling within paragraph (a) above as to suggest an association with the relevant company.
- (2) Except with the 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 five years beginning with the day on which the relevant company went into liquidation—
 - (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.
- (3) If a person acts in contravention of this section, he shall in respect of each offence, be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both ;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) In subsection (2) above "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.
- (5) References in this section, in relation to any time, to a name by which a company is known are references to the name of the company at that time or to any name under which the company carries on business at that time.
- (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 " company " includes a company which may be wound up under Part XXI of the 1985 Act.

18 Personal liability of persons acting while disqualified

- (1) A person shall be personally responsible for all the relevant debts of a company if at any time—
 - (a) in contravention of a disqualification order, of section 17 above or of section 302 of the 1985 Act (provision against undischarged bankrupt acting as director etc.), 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 the subject of a disqualification order, to be in contravention in relation to that company of section 17 above or to be an undischarged bankrupt.
- (2) Where a person is personally responsible under this section for the relevant debts of a company he shall be jointly and severally liable in respect of those debts with the

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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) above, 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 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 the subject of a disqualification order, to be in contravention in relation to that company of section 17 above or to be an undischarged bankrupt shall be 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 XXI of the 1985 Act.

19 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, administrator or administrative receiver of the company ; or
 - (c) not being a person falling within paragraph (a) or (b) above, 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) above 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 or administrator of the company, a reference to any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator or administrator of the company.
- (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) above 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

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- (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) above in relation to a person who has acted as liquidator or administrator of the company shall not be exercisable, except with the leave of the court, after that person has had his release.
- (5) The power of a contributory to make an application under subsection (3) above shall not be exercisable except with the leave of the court but shall be exercisable notwithstanding that he will not benefit from any order the court may make on the application.