



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER I

DISQUALIFICATION AND PERSONAL LIABILITY OF DIRECTORS AND OTHERS

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.
- (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

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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.