



# 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*Status: Point in time view as at 06/06/2013. This version of this provision has been superseded.*

*Changes to legislation: Insolvency Act 1986, Section 212 is up to date with all changes known to be in force on or before 12 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)*

- (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)

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