



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

214 Wrongful trading.

- (1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) of this section 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—
- the company has gone into insolvent liquidation,
 - 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 [^{F1}or entering insolvent administration], and
 - that person was a director of the company at that time;

but the court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) above was before 28th April 1986.

- (3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) was first satisfied

Status: Point in time view as at 01/03/2016. This version of this provision has been superseded.

Changes to legislation: Insolvency Act 1986, Section 214 is up to date with all changes known to be in force on or before 01 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)

in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as ([F²on the assumption that he had knowledge of the matter mentioned in subsection (2)(b)]) he ought to have taken.

- (4) For the purposes of subsections (2) and (3), 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) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.
- (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.
- [F³(6A) For the purposes of this section a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration.]
- (7) In this section “director” includes a shadow director.
- (8) This section is without prejudice to section 213.

Textual Amendments

- F1** Words in s. 214(2)(b) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 117\(3\)\(a\)](#), 164(1); S.I. 2015/1689, [reg. 2\(j\)](#) (with Sch. para. 15)
- F2** Words in s. 214(3) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 117\(3\)\(b\)](#), 164(1); S.I. 2015/1689, [reg. 2\(j\)](#) (with Sch. para. 15)
- F3** S. 214(6A) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 117\(3\)\(c\)](#), 164(1); S.I. 2015/1689, [reg. 2\(j\)](#) (with Sch. para. 15)

Modifications etc. (not altering text)

- C1** S. 214 modified (7.10.2008 at 9.30 a.m.) by [The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, [Sch. 2 para. 3\(a\)](#)
- C2** S. 214 modified (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13, [Sch. 1 para. 3\(a\)](#)
- C3** S. 214 modified (22.2.2008) by [The Northern Rock plc Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), [Sch. para. 3\(a\)](#)
- C4** S. 214 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)
- C5** S. 214 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
- C6** S. 214 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch. para. 3
- C7** S. 214 modified (30.3.2009 at 8.00 a.m.) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), art. 7, [Sch. 1 para. 3\(a\)](#)

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- C8** S. 214 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)
- C9** S. 214 excluded (1.3.2016) by [The NRAM plc \(formerly Northern Rock plc\) Consequential and Supplementary Provisions Order 2016 \(S.I. 2016/114\)](#), arts. 1(1), 7(1)(3), **Sch. para. 2(a)**
- C10** S. 214(2) modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(2), **Sch. 3**
- C11** S. 214(4) applied (6.4.2005) by [The Pensions Regulator \(Notifiable Events\) Regulations 2005 \(S.I. 2005/900\)](#), **reg. 2(2)(c)**

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