



# 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

##### *Investigation and prosecution of malpractice*

#### **218 Prosecution of delinquent officers and members of company.**

- (1) If it appears to the court in the course of a winding up by the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter to the prosecuting authority.
- (2) “The prosecuting authority” means—
  - (a) in the case of a winding up in England and Wales, the Director of Public Prosecutions, and
  - (b) in the case of a winding up in Scotland, the Lord Advocate.
- (3) If in the case of a winding up by the court in England and Wales it appears to the liquidator, not being the official receiver, that any past or present officer of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.

*Status: Point in time view as at 01/12/1994. This version of this provision has been superseded.*

**Changes to legislation:** *Insolvency Act 1986, Section 218 is up to date with all changes known to be in force on or before 28 May 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)*

- (4) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, he shall—
- (a) forthwith report the matter to the prosecuting authority, and
  - (b) furnish to that authority such information and give to him such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the authority requires.
- (5) Where a report is made to him under subsection (4), the prosecuting authority may, if he thinks fit, refer the matter to the Secretary of State for further enquiry; and the Secretary of State—
- [<sup>F1</sup>(a) shall thereupon investigate the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, and]
  - (b) for the purpose of his investigation may exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act to investigate a company's affairs
- (6) If it appears to the court in the course of a voluntary winding up that—
- (a) any past or present officer of the company, or any member of it, has been guilty as above-mentioned, and
  - (b) no report with respect to the matter has been made by the liquidator to the prosecuting authority under subsection (4),
- the court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report.

On a report being made accordingly, this section has effect as though the report had been made in pursuance of subsection (4).

#### **Textual Amendments**

**F1** S. 218(5)(a) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 78, 213(2)

**Status:**

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