



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 10

INSOLVENCY

Office-holder actions

117 Power for administrator to bring claim for fraudulent or wrongful trading

- (1) The Insolvency Act 1986 is amended as follows.
- (2) After section 246 insert—

“Administration: penalisation of directors etc

246ZA Fraudulent trading: administration

- (1) If while a company is in administration it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.
- (2) The court, on the application of the administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are to be liable to make such contributions (if any) to the company’s assets as the court thinks proper.

246ZB Wrongful trading: administration

- (1) Subject to subsection (3), if while a company is in administration it appears that subsection (2) applies in relation to a person who is or has been a director

of the company, the court, on the application of the administrator, 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 entered insolvent administration,
 - (b) at some time before the company entered administration, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid entering insolvent administration or going into insolvent liquidation, and
 - (c) the person was a director of the company at that time.
- (3) The court must 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 in relation to the person, the person took every step with a view to minimising the potential loss to the company's creditors as (on the assumption that the person had knowledge of the matter mentioned in subsection (2)(b)) the person 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 the director ought to reach and the steps which the director 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 the director does not carry out but which have been entrusted to the director.
- (6) For the purposes of this section—
 - (a) 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;
 - (b) 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 “director” includes shadow director.
- (8) This section is without prejudice to section 246ZA.

246ZC Proceedings under section 246ZA or 246ZB

Section 215 applies for the purposes of an application under section 246ZA or 246ZB as it applies for the purposes of an application under section 213 but as if the reference in subsection (1) of section 215 to the liquidator was a reference to the administrator.”

- (3) In section 214 (wrongful trading)—

Status: This is the original version (as it was originally enacted).

- (a) in subsection (2)(b), after “liquidation” insert “or entering insolvent administration”;
- (b) in subsection (3), for the words from “assuming” to “liquidation” substitute “on the assumption that he had knowledge of the matter mentioned in subsection (2)(b)”, and
- (c) after subsection (6) insert—

“(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.”

118 Power for liquidator or administrator to assign causes of action

After section 246ZC of the Insolvency Act 1986 (inserted by section 117) insert—

“Power to assign certain causes of action

246ZD Power to assign

- (1) This section applies in the case of a company where—
 - (a) the company enters administration, or
 - (b) the company goes into liquidation;and “the office-holder” means the administrator or the liquidator, as the case may be.
- (2) The office-holder may assign a right of action (including the proceeds of an action) arising under any of the following—
 - (a) section 213 or 246ZA (fraudulent trading);
 - (b) section 214 or 246ZB (wrongful trading);
 - (c) section 238 (transactions at an undervalue (England and Wales));
 - (d) section 239 (preferences (England and Wales));
 - (e) section 242 (gratuitous alienations (Scotland));
 - (f) section 243 (unfair preferences (Scotland));
 - (g) section 244 (extortionate credit transactions).”

119 Application of proceeds of office-holder claims

After section 176ZA of the Insolvency Act 1986 insert—

“176ZB Application of proceeds of office-holder claims

- (1) This section applies where—
 - (a) there is a floating charge (whether created before or after the coming into force of this section) which relates to property of a company which—
 - (i) is in administration, or
 - (ii) has gone into liquidation; and

Status: This is the original version (as it was originally enacted).

- (b) the administrator or the liquidator (referred to in this section as “the office-holder”) has—
 - (i) brought a claim under any provision mentioned in subsection (3), or
 - (ii) made an assignment (or, in Scotland, assignation) in relation to a right of action under any such provision under section 246ZD.
- (2) The proceeds of the claim or assignment (or, in Scotland, assignation) are not to be treated as part of the company’s net property, that is to say the amount of its property which would be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (3) The provisions are—
 - (a) section 213 or 246ZA (fraudulent trading);
 - (b) section 214 or 246ZB (wrongful trading);
 - (c) section 238 (transactions at an undervalue (England and Wales));
 - (d) section 239 (preferences (England and Wales));
 - (e) section 242 (gratuitous alienations (Scotland));
 - (f) section 243 (unfair preferences (Scotland));
 - (g) section 244 (extortionate credit transactions).
- (4) Subsection (2) does not apply to a company if or in so far as it is disapplied by—
 - (a) a voluntary arrangement in respect of the company, or
 - (b) a compromise or arrangement agreed under Part 26 of the Companies Act 2006 (arrangements and reconstructions).”