



# 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)—

- (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.”