



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART V

WINDING UP.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Offences antecedent to or in course of Winding Up.

328 Offences by officers of companies in liquidation.

- (1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—
- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
 - (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
 - (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
 - (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company; or

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- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards; or
- (f) makes any material omission in any statement relating to the affairs of the company; or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before, the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or
- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be guilty of a misdemeanour and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable on conviction on indictment to penal servitude for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (a) and (o), if the accused proves that he had no intent to defraud, and to

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a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

- (2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (f) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanour, and on conviction thereof liable—
- (a) in England to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour;
 - (b) in Scotland on conviction on indictment to penal servitude for a period not exceeding seven years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.
- (3) For the purposes of this section, the expression “officer ” shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.