



# Insolvency Act 1986

## 1986 CHAPTER 45

### [<sup>F1</sup>PART A1

#### MORATORIUM

### [<sup>F1</sup>CHAPTER 7

#### OFFENCES: GENERAL

#### Textual Amendments

- F1** Pt. A1 inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **ss. 1(1)**, 49(1) (with **ss. 2(2)**, 5(2))

#### **A46 Offence of fraud etc during or in anticipation of moratorium**

- (1) An officer of a company commits an offence if, during a moratorium for the company or at any time within the period of 12 months ending with the day on which a moratorium for the company comes into force, the officer—
- does any of the things mentioned in subsection (2), or
  - was privy to the doing by others of any of the things mentioned in subsection (2)(c), (d) and (e).
- (2) Those things are—
- concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company,
  - fraudulently removing any part of the company's property to the value of £500 or more,
  - concealing, destroying, mutilating or falsifying any document affecting or relating to the company's property or affairs,

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- (d) making any false entry in any document affecting or relating to the company’s property or affairs,
  - (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company’s property or affairs, or
  - (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company’s business).
- (3) It is a defence—
- (a) for a person charged with an offence under subsection (1) in respect of any of the things mentioned in subsection (2)(a) or (f) to prove that the person had no intent to defraud, and
  - (b) for a person charged with an offence under subsection (1) in respect of any of the things mentioned in subsection (2)(c) or (d) to prove that the person had no intent to conceal the state of affairs of the company or to defeat the law.
- (4) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under subsection (1), every person who takes in pawn or pledge, or otherwise receives, the property commits an offence if the person knows it to be pawned, pledged or disposed of in circumstances which—
- (a) amount to an offence under subsection (1), or
  - (b) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under subsection (1).
- (5) In this section, “officer” includes a shadow director.

#### **A47 Offence of false representation etc to obtain a moratorium**

- (1) An officer of a company commits an offence if, for the purpose of obtaining a moratorium for the company or an extension of a moratorium for the company, the officer—
- (a) makes any false representation, or
  - (b) fraudulently does, or omits to do, anything.
- (2) Subsection (1) applies even if no moratorium or extension is obtained.
- (3) In this section, “officer” includes a shadow director.

#### **A48 Prosecution of delinquent officers of company**

- (1) This section applies where a moratorium has been obtained for a company.
- (2) If it appears to the monitor that any past or present officer of the company has committed an offence in connection with the moratorium, the monitor must forthwith—
- (a) report the matter to the appropriate authority, and
  - (b) provide the appropriate authority with such information and give the authority 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 monitor and relating to the matter in question) as the authority requires.
- (3) In subsection (2), “the appropriate authority”—

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- (a) in the case of a company registered in England and Wales, means the Secretary of State,
  - (b) in the case of a company registered in Scotland, means the Lord Advocate, and
  - (c) in the case of an unregistered company means—
    - (i) if it has a principal place of business in England and Wales but not Scotland, the Secretary of State,
    - (ii) if it has a principal place of business in Scotland but not England and Wales, the Lord Advocate,
    - (iii) if it has a principal place of business in both England and Wales and Scotland, the Secretary of State and the Lord Advocate, and
    - (iv) if it does not have a principal place of business in England and Wales or Scotland, the Secretary of State.
- (4) Where a matter is reported to the Secretary of State under subsection (2), the Secretary of State may, for the purpose of investigating the matter and such other matters relating to the affairs of the company as appear to the Secretary of State to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985.
- (5) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Acts to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Secretary of State in the Secretary of State’s investigation.
- (6) Where a question is put to a person in exercise of the powers conferred by subsection (4), the person’s answer may be used in evidence against them.
- (7) However, in criminal proceedings in which the person is charged with an offence other than a false statement offence—
  - (a) no evidence relating to the answer may be adduced, and
  - (b) no question relating to it may be asked,by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.
- (8) In subsection (7) “false statement offence” means—
  - (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or
  - (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).
- (9) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the monitor, and every officer and agent of the company past and present (other than the defendant or defender), must give the authority all assistance in connection with the prosecution which they are reasonably able to give.
- (10) For this purpose—
  - “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company;
  - “prosecuting authority” means the Director of Public Prosecutions, the Lord Advocate or the Secretary of State.

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- (11) The court may, on the application of the prosecuting authority, direct a person who has failed to comply with subsection (9) to comply with it.]

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by [S.I. 2017/1119 Sch. 3 para. 1](#)
- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)