

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

Penalisation of directors and officers

214 Wrongful trading.

- (1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) of this section applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, 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 gone into insolvent liquidation,
 - (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and
 - (c) that person was a director of the company at that time;

but the court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) above was before 28th April 1986.

- (3) The court shall 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 him that person took every step with a view to minimising the potential

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loss to the company's creditors as (^{F1}on the assumption that he had knowledge of the matter mentioned in subsection (2)(b)]) he 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 he ought to reach and the steps which he 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 he does not carry out but which have been entrusted to him.
- (6) For the purposes of this section 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.
- ^{F2}(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.]
- (7) In this section “director” includes a shadow director.
- (8) This section is without prejudice to section 213.

Textual Amendments

- F1** Words in s. 214(3) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 117\(3\)\(b\)](#), 164(1); S.I. 2015/1689, reg. 2(j) (with Sch. para. 15)
- F2** S. 214(6A) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 117\(3\)\(c\)](#), 164(1); S.I. 2015/1689, reg. 2(j) (with Sch. para. 15)

Modifications etc. (not altering text)

- C1** S. 214 modified (7.10.2008 at 9.30 a.m.) by [The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 3(a)**
- C2** S. 214 modified (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13, **Sch. 1 para. 3(a)**
- C3** S. 214 modified (22.2.2008) by [The Northern Rock plc Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 3(a)**
- C4** S. 214 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**
- C5** S. 214 modified (30.3.2009 at 8.00 a.m.) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), art. 7, **Sch. 1 para. 3(a)**
- C6** S. 214 applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
- C7** S. 214 excluded (1.3.2016) by [The NRAM plc \(formerly Northern Rock plc\) Consequential and Supplementary Provisions Order 2016 \(S.I. 2016/114\)](#), arts. 1(1), 7(1)(3), **Sch. para. 2(a)**
- C8** S. 214 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2 (as amended (7.4.2017) by [The Deregulation Act 2015](#), the [Small Business, Enterprise and Employment Act 2015](#)

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- and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(4)**
- C9** S. 214 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3 (as amended (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(10)**)
- C10** S. 214 modified (26.11.2020) by The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020 (S.I. 2020/1349), regs. 1, **2(1)(2)** (with reg. 2(3)-(9))
- C11** S. 214(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**
- C12** S. 214(4) applied (6.4.2005) by The Pensions Regulator (Notifiable Events) Regulations 2005 (S.I. 2005/900), **reg. 2(2)(c)**

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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](#)

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

- Pt. 2 words substituted by [S.I. 2019/146 Sch. para. 45\(2\)](#) (This amendment is to 1986 c. 45, Pt. 2 as that Part had effect immediately before the coming into force of 2002 c. 40, s. 248 and in so far as it continues to have effect)
- s. 5A applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by [S.I. 2017/1119 Sch. 2 para. 4](#)
- s. 12C applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by [S.I. 2017/1119 Sch. 2 para. 4](#)
- s. 13-15C applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by [S.I. 2017/1119 Sch. 2 para. 4](#)
- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)
- s. 210(2A)(2B) omitted by [S.I. 2019/146 Sch. para. 24\(3\)](#) (This S.I. is amended by S.I. 2019/1459, Sch. para. 2)
- s. 263I(1)(ab) inserted by [S.I. 2019/146 Sch. para. 31\(2\)\(a\)](#)
- s. 263I(5) inserted by [S.I. 2019/146 Sch. para. 31\(3\)](#)
- s. 265(1)(ab) inserted by [S.I. 2019/146 Sch. para. 33\(2\)\(a\)](#)
- s. 265(5) inserted by [S.I. 2019/146 Sch. para. 33\(3\)](#)
- s. 422A inserted by [S.I. 2019/146 Sch. para. 41](#)
- Sch. 6 para. 15D and cross-heading inserted by [2020 c. 14 s. 98\(2\)](#)
- Sch. 6 para. 15BB modified by [S.I. 2019/680 reg. 11\(3\)\(4\)\(6\)](#)
- Sch. 6 para. 15BB(a) words substituted by [S.I. 2018/1394 Sch. 2 para. 2\(a\)\(i\)](#)
- Sch. 6 para. 15BB(a) words substituted by [S.I. 2018/1394 Sch. 2 para. 2\(a\)\(ii\)](#)
- Sch. 6 para. 15BB(b) words substituted by [S.I. 2018/1394 Sch. 2 para. 2\(b\)](#)