



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.

334 Prosecution of delinquent officers and members of company.

- (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate.
- (2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of "any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate and shall furnish to the Director or Lord Advocate, as the case may be, such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as they respectively may require.
- (3) Where any report is made under the last foregoing subsection to the Director of Public Prosecutions or Lord Advocate, he may, if he thinks fit, refer the matter to the Board of Trade for further enquiry, and the Board shall thereupon investigate the matter and may if they think it expedient, apply to the court for an order conferring on the Board

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or any person designated by the Board for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

- (4) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions or the Lord Advocate under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.
- (5) If, where any matter is reported or referred to the Director of Public Prosecutions or Lord Advocate under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression “agent ” in relation to a company shall be deemed to include 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.

- (6) If any person fails or neglects to give assistance in manner required by the last foregoing subsection, the court may, on the application of the Director of Public Prosecutions or Lord Advocate, as the case may be, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.