

Accounting records: offences

286. (1) A company that contravenes section 281, 282, 283, 284 or 285 shall be guilty of—

(a) subject to paragraph (b), a category 2 offence, or

(b) if the contravention falls within a case to which subsection (3), (4) or (5) relates, a category 1 offence.

(2) A director of a company who fails to take all reasonable steps to secure compliance by the company with the requirements of any of sections 281 to 285, or has by his or her own intentional act been the cause of any default by the company under any of them, shall be guilty of—

(a) subject to paragraph (b), a category 2 offence, or

(b) if the contravention falls within a case to which subsection (3), (4) or (5) relates, a category 1 offence.

(3) This subsection relates to a case in which both of the following circumstances apply—

(a) the contravention arose in relation to a company that is subsequently wound up and that company is unable to pay its debts, and

(b) the contravention has—

(i) contributed to the company's inability to pay all of its debts, or

(ii) resulted in substantial uncertainty as to the assets and liabilities of the company, or

(iii) substantially impeded the orderly winding up of the company.

(4) This subsection relates to a case in which the contravention persisted during a continuous period of 3 years or more.

(5) This subsection relates to a case in which the contravention involved the failure to correctly record and explain one or more transactions of a company the value or aggregate value of which transaction or transactions exceeded €1 million or 10 per cent of the net assets of the company, whichever is the greater.

(6) Subject to subsection (7), the reference in subsection (5) to the net assets of the company is a reference to net assets, as defined in section 275 (1), of the company and for this purpose the amount of its net assets shall be ascertained by reference to the entity financial statements prepared under section 290 and laid in accordance with section 341 in respect of the last preceding financial year in respect of which such entity financial statements were so laid.

(7) Where no entity financial statements of the company have been prepared and laid under the foregoing sections before that time, the reference in subsection (5) to the net assets of the company shall be taken to be a reference to the amount of its called-up share capital at the time of the contravention.

(8) In any proceedings against a person in respect of an offence under subsection (2) consisting of a failure to take reasonable steps to secure compliance by a company with the requirements of any of sections 281 to 285, it shall be a defence to prove both of the following:

(a) that the defendant had reasonable grounds for believing and did believe that a competent and reliable person was—

(i) charged with the duty of undertaking that those requirements were complied with, and

(ii) in a position to discharge that duty,

and

(b) that the discharge of that duty by such competent and reliable person was monitored by the defendant, by means of reasonable methods properly used.