

CHAPTER 6 Liability of contributories in winding up

Liability as contributories of past and present members and provision concerning winding up after certain re-registration

997. (1) Subject to subsection (2), in the event of a DAC being wound up, every present and past member shall be liable to contribute to the assets of the DAC to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) The following qualifications apply in relation to subsection (1):

(a) in the case of a DAC limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he or she is liable as a present or past member;

(b) in the case of a DAC limited by guarantee, no contribution shall, subject to subsection (3), be required from any member exceeding the amount undertaken to be contributed by him or her to the assets of the DAC in the event of its being wound up;

(c) a past member shall not be liable to contribute if he or she has ceased to be a member for one year or more before the commencement of the winding up;

(d) a past member shall not be liable to contribute in respect of any debt or liability of the DAC contracted after he or she ceased to be a member;

(e) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the DAC are alone made liable in respect of the policy or contract;

(g) a sum due to any member of the DAC, in his or her character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself or herself and any other creditor not a member of the DAC, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In a winding up of a DAC limited by guarantee, every member of the DAC shall be liable, in addition to the amount undertaken to be contributed by him or her to the assets of the DAC in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him or her.

(4) Without prejudice to the application of that section to a DAC, and its adaptation generally, by

section 964 of section 665 (winding up of company that had been an unlimited company before re-registration), paragraph (c) of section 665 shall apply as if the reference in it to section 655 (2)(a) were—

(a) in the case of a DAC limited by shares, a reference to subsection (2)(a) of this section,

(b) in the case of a DAC limited by guarantee, a reference to subsections (2)(b) and (3) of this section.