

## Application of certain provisions to companies not in liquidation

567. (1) This section applies in relation to a company that is not being wound up where—

(a) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or

(b) it is proved to the satisfaction of the court that the company is unable to pay its debts, taking into account the contingent and prospective liabilities of the company,

and, in either case, it appears to the court that the reason or the principal reason for its not being wound up is the insufficiency of its assets.

(2) The sections specified in the Table to this section apply, with the necessary modifications, to a company to which this section applies, notwithstanding that it is not being wound up; accordingly, a person who would have standing otherwise to apply for an order or judgment under a section so specified shall have such standing to make an application under that section as so applied, but this does not affect the Director's power under subsection (3).

(3) The Director may apply to the court pursuant to this subsection for an order or judgment, as the case may be, under any of the sections which apply to a company to which this section applies.

(4) References in the sections specified in the Table to this section to—

(a) the commencement of the winding up of a company,

(b) the appointment of a provisional liquidator,

(c) the making of a winding-up order, or

(d) the relevant date,

shall, for the purposes of this section, be read as references to the date—

(i) of the judgment, decree or order mentioned in subsection (1)(a), or

(ii) on which the court determines that the company is unable to pay its debts.

(5) Where, by virtue of this section, proceedings are instituted under section 599, 608, 609, 610, 612 or 672, sections 610 (6) and 611 shall apply in relation to any order made as a result of those proceedings except that an order made as a result of an application by the Director pursuant to subsection (3) shall not be made in favour of the Director, otherwise than as to his or her costs and expenses.

(6) Subject to subsection (7), a person having a claim against the company may apply to the court for such order as is appropriate by way of enforcement of any right the court on the application finds to arise on the person's part to payment of a share of any sums or assets recovered or available following a successful application by the Director pursuant to subsection (3), and, on the hearing of an application under this subsection, the court may make such an order accordingly.

(7) An application under subsection (6) shall be made within a period of 30 days after the date of judgment or order given on behalf or in favour of the Director pursuant to subsection (3).

(8) Where section 721 applies by virtue of this section, it shall so apply as if the words "which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up" were deleted from it.

## TABLE

### Sections to which this section applies

Section	Subject
Section 286 (3)	Particular case of category 1 offence arising where adequate accounting records not kept, etc.
Section 599	Related company may be required to contribute to debts of company being wound up
Section 608	Power of court to order return of assets which have been improperly transferred
Section 609	Personal liability of officers of company where adequate accounting records not kept
Sections 610 and 611	Civil liability for fraudulent trading
Section 612	Power of court to assess damages against certain persons
Section 613	Directors of holding company: power of court to assess damages against them
Section 671	Power of court to summon persons for examination
Section 672	Order for payment or delivery of property against person examined under section 671
Section 675	Order for arrest and seizure, etc.
Section 684	Inspection of books by creditors and contributories
Section 721	Other frauds by officers of companies which have gone into liquidation: offence
Section 722	Fraudulent trading of company: offence
Section 751	Order for inspection of books or documents of company in liquidation
Section 818	Interpretation and application of Part 14)