

Civil liability for fraudulent or reckless trading of company

610. (1) If in the course of the winding up of a company or in the course of proceedings under Part 10 in relation to a company, it appears that—

(a) any person was, while an officer of the company, knowingly a party to the carrying on of any business of the company in a reckless manner, or

(b) any person was knowingly a party to the carrying on of any business of the company with intent to defraud creditors of the company, or creditors of any other person or for any fraudulent purpose,

the court, on the application of the liquidator or examiner of the company, a receiver of property of the company or any creditor or contributory of it, has the following power.

(2) That power of the court is to declare, if it thinks it proper to do so, that the person first-mentioned in paragraph (a) or (b) of subsection (1) shall be personally responsible, without any limitation of liability, for all or any part of the debts or other liabilities of the company as the court may direct.

(3) Without prejudice to the generality of subsection (1)(a), an officer of a company shall be deemed to have been knowingly a party to the carrying on of any business of the company in a reckless manner if—

(a) the person was a party to the carrying on of such business and, having regard to the general knowledge, skill and experience that may reasonably be expected of a person in his or her position, the person ought to have known that his or her actions or those of the company would cause loss to the creditors of the company, or any of them, or

(b) the person was a party to the contracting of a debt by the company and did not honestly believe on reasonable grounds that the company would be able to pay the debt when it fell due for payment as well as all its other debts (taking into account the contingent and prospective liabilities).

(4) Notwithstanding anything contained in subsection (2), the court may grant a declaration on the grounds set out in subsection (1)(a) only if—

(a) paragraph (a), (b), (c) or (d) of section 570 applies to the company concerned, and

(b) an applicant for such a declaration, being a creditor or contributory of the company or any person on whose behalf such application is made, suffered loss or damage as a consequence of any behaviour mentioned in subsection (1).

(5) In deciding whether it is proper to make a declaration on the ground set out in subsection (3)(b), the court shall have regard to whether the creditor in question was, at the time the debt was incurred, aware of the company's financial state of affairs and, notwithstanding such awareness, nevertheless assented to the incurring of the debt.

(6) Where the court makes a declaration under this section, it may provide that sums recovered under this section shall be paid to such person or classes of persons, for such purposes, in such amounts or proportions at such time or times and in such respective priorities among themselves as such declaration may specify.

(7) On the hearing of an application under this section, the applicant may himself or herself give evidence or call witnesses.

(8) Where it appears to the court that any person in respect of whom a declaration has been sought on the grounds set out in subsection (1)(a) has acted honestly and responsibly in relation to the conduct of the affairs of the company or any matter or matters on the ground of which such declaration is sought to be made, the court may, having regard to all the circumstances of the case, relieve him or her either wholly or in part, from personal liability on such terms as it may think fit.