

CHAPTER 6 Winding up

Liability as contributories of past and present members

1278. (1) Subject to subsection (2), in the event of an unlimited company being wound up, every present and past member shall be liable to contribute to the assets of the unlimited company 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) 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;

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

(c) 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;

(d) 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 unlimited company are alone made liable in respect of the policy or contract;

(e) a sum due to any member of the unlimited company, in his or her character of a member, by way of distributions, 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 unlimited company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.