

170. Liability as contributories of present and past members

- (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the 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, subject to the provisions of subsection (2) and the following qualifications—
- (a) a past member shall not be liable to contribute if he has ceased to be a member for 1 year or upwards 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 company contracted after he 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 contribution required to be made by them in pursuance of this Ordinance;
 - (d) in the case of a company 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 is liable as a present or past member;
 - (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
 - (f) nothing in this Ordinance or the Companies Ordinance (Cap. 622) 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 company are alone made liable in respect of the policy or contract; (*Amended 28 of 2012 ss. 912 & 920*)
 - (g) a sum due to any member of a company, in his 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 and any other creditor not a member of the 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.
- (2) In the winding up of a limited company, any director, whether past or present, whose liability is, under the provisions of the pre-amended Ordinance, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company; (*Amended 28 of 2012 ss. 912 & 920*)
- Provided that—
- (a) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
 - (b) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
 - (c) subject to the articles of the company, a director shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up. (*Amended 6 of 1984 s. 127*)
- (3) In the winding up of a company limited by guarantee which has a share capital, every

member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

[cf. 1929 c. 23 s. 157 U.K.]