

ARTHUR COX

**Receivers:
Part 8 of the Draft Companies Bill**

William Johnston
Partner

Contents of Presentation

- 1. Part 8: Receivers**
- 2. Chapter 1 - Interpretation**
- 3. Chapter 2 – Appointment of Receivers**
- 4. Chapter 3 – Powers and duties of Receivers**
- 5. Chapter 4 – Regulation of Receivers and Enforcement of their Duties**

Part 8 – Charges and debentures

- Consists of 4 Chapters.
- Contain 21 sections of law.

Chapter 1 - Interpretation

Section 420 – Appointment of receiver under powers contained in instrument: construction of such reference

- This is an interpretation section.

Chapter 2 – Appointment of Receivers

Section 421 – Notification that receiver has been appointed

- This section is an updated amending re-enactment of section 317 of the Companies Act 1963.

Chapter 2 – Appointment of Receivers

Section 422 – Information to be given when Receiver is appointed in certain circumstances

- This section is an updated re-enactment of section 319 of the Companies Act 1963 (as amended by section 52 of the Company Law Enforcement Act 2001).

Chapter 2 – Appointment of Receivers

Section 423 – Contents of Statement to be Submitted to Receiver

- This section is an amended re-enactment of section 320 of the Companies Act 1963 (as amended by section 173 of the Companies Act 1990)..

Chapter 2 – Appointment of Receivers

Section 424 – Consequences of Contravention of Section 422(1)(b) or 423

- This section re-enacts section 320A of the Companies Act 1963 (as amended by section 174 of the Companies Act 1990)..

Chapter 2 – Appointment of Receivers

Section 425 – Disqualification for Appointment as Receiver

- This section re-enacts section 315 of the Companies Act 1963.

Chapter 2 – Appointment of Receivers

Section 426 – Resignation of Receiver

- This section is an updated re-enactment of section 322C of the Companies Act 1963.

Chapter 2 – Appointment of Receivers

Section 427 – Removal of Receiver

- This section is a re-enactment of section 322A of the Companies Act 1963.

Chapter 2 – Appointment of Receivers

Section 428 – Notice to Registrar of Appointment of Receiver, and of Receiver Ceasing to Act

- This section is an updated re-enactment of section 107 of the Companies Act 1963. The requirement to publish in at least one daily newspaper has been replaced with a requirement to publish in the CRO Gazette, which is freely available online.

Chapter 3 – Powers and Duties of Receivers

Section 429 – Powers of Receiver

- The section is modelled on Section 420 of the Australian Corporations Law and gives certain specific powers to receivers in addition to those conferred on them by the court order or instrument under which they were appointed..

Chapter 3 – Powers and Duties of Receivers

Section 430 – Power of Receiver and Certain Others to Apply to Court, for Directions and Receiver’s Liability on Contracts

- This section is an amended re-enactment of section 316 of the Companies Act 1963 (as amended by section 171 of the Companies Act 1990)..

Chapter 3 – Powers and Duties of Receivers

Section 431 – Duty of Receiver Selling Property to get Best Price Reasonably Obtainable, etc.

- This section is a slightly amended re-enactment of section 316A of the Companies Act 1963. Critically the requirement and language of subsection (1) concerning the best price has not altered and is therefore clearer and thus less onerous than the equivalent power in the Land and Conveyancing Law Reform Act 2009.

Chapter 3 – Powers and Duties of Receivers

Section 432 – Preferential Payments when Receiver is Appointed Under Floating Charge

- This section is a slightly amended re-enactment of section 98 of the Companies Act 1963.

Chapter 3 – Powers and Duties of Receivers

Section 433 – Delivery to Registrar of Accounts of Receivers

- This section is a slightly amended re-enactment of section 321 of the Companies Act 1963..

Chapter 4 – Regulation of Receivers and Enforcement of their Duties

Section 434 – Enforcement of Duty of Receivers to make returns

- This is an amended re-enactment of section 322 of the Companies Act 1963.

Chapter 4 – Regulation of Receivers and Enforcement of their Duties

Section 435 – Power of Court to Order the Return of Assets Improperly Transferred

- This section is a re-enactment of section 139 of the Companies Act 1990 as applied by section 178 of the Companies Act 1990.

Chapter 4 – Regulation of Receivers and Enforcement of their Duties

Section 436 – Power of Court to Fix Remuneration of Receiver

- This section re-enacts section 318 of the Companies Act 1963. However, subsection (6) is new in that it protects the receiver's right to an indemnity out of the company's assets.

Chapter 4 – Regulation of Receivers and Enforcement of their Duties

Section 437 – Court may end or limit Receivership on Application of Liquidator

- This section re-enacts section 322B of the Companies Act 1963.

Chapter 4 – Regulation of Receivers and Enforcement of their Duties

Section 438 – Director of Corporate Enforcement may request production of Receiver's Books

- This section is an updated re-enactment of section 323A of the Companies Act 1963..

Chapter 4 – Regulation of Receivers and Enforcement of their Duties

Section 439 – Prosecution of Offences Committed by Officers and Members of Company

- This section is, in substance, a slightly amended re-enactment of part of Section 299 of the Companies Act, 1963 (as amended by Section 143 of the Companies Act, 1990 and Section 51 of the Company Law Enforcement Act 2001), as applied by Section 179 of the Companies Act, 1990 to receivers.

Chapter 4 – Regulation of Receivers and Enforcement of their Duties

Section 440 – Reporting to Director of Corporate Enforcement of misconduct by Receivers

- This is a new section and is modelled somewhat on the requirements under section 56 of the Company Law Enforcement Act 2001 of a liquidator to report the conduct of directors to the Director of Corporate Enforcement.

For Further Information Contact

**William Johnston,
Partner
Arthur Cox**

william.johnston@arthurcox.com

Direct line – 01 618 0560

William is a partner in Arthur Cox's Banking Department and has been a member of the Company Law Review Group since its establishment in 2001. His publications include "Banking and Security Law in Ireland" (Butterworths 1998).

Thank You.

Dublin

Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland
tel: +353 (0)1 618 0000 | **fax:** +353 (0)1 618 0618
email: dublin@arthurcox.com

London

12 Gough Square, London EC4A 3DW, England
tel: +44 (0)20 7832 0200 | **fax:** +44 (0)20 7832 0201
email: london@arthurcox.com

Belfast

Capital House, 3 Upper Queen Street, Belfast BT1 6PU, Northern Ireland
tel: +44 (0)28 9023 0007 | **fax:** +44 (0)28 9023 3464
email: belfast@arthurcox.com

New York

300 Park Avenue, 17th Floor, New York NY 10022, USA
tel: +1 (1)212 705 4288 | **fax:** +1 (1)212 572 6499
email: newyork@arthurcox.com

www.arthurcox.com