

ARTHUR COX

**Investigations:
Part 13 of the Companies Act**

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Part 13 – Investigations

- All law relating to the investigation of companies will be codified in Part 13.
- Consists of 4 Chapters,
- Contain 51 sections of law.

Chapter 1 – Preliminary

Chapter 1 contains 1 section (s 746):

- Section 746 is a preliminary section, explaining the subsequent use of various terms in Part 13.

Chapter 2 – Investigations by court appointed inspectors

Chapter 2 contains 16 sections (*ss 747 - 762*):

- Section 747 provides for the court to appoint one or more inspectors, on the application of a person including the company, to investigate the affairs of a company and to report on those matters, and sets out related matters.
- Section 748 provides for the court to appoint such an inspector or inspectors on the application of the Director of Corporate Enforcement.

Chapter 2 – Investigations by court appointed inspectors

- Section 749 states that the Court may give such directions as it considers expedient in relation to the investigation.
- Section 750 provides that the inspector may, if approved by the court, investigate the affairs of (and report upon) a related body corporate.
- Section 751 states that the court may order that the Director for Corporate Enforcement be allowed to inspect any books or documents held by a company in the course of winding up.

Chapter 2 – Investigations by court appointed inspectors

- Sections 752 to 757 provide:
 - that officers or agents (as defined) of a company under investigation, or any other person as are so directed by an inspector, may be required to produce books or documents or give assistance;
 - that directors may be required to provide additional information in respect of banking transactions;
 - that an inspector may examine the above persons; and
 - that the court may make an order in a case of default in respect of the above.

Chapter 2 – Investigations by court appointed inspectors

- Sections 758 - 761 provide:
 - for the inspector to make a report;
 - for the distribution of that report; and
 - that after considering that report, the court may make an order for winding-up, or any other order, or the Director may present a petition for winding up.
- Section 762 provides for the payment of the expenses of an investigation under this Chapter.

Chapter 3 – Investigations initiated by Director

Chapter 3 contains 15 sections (*ss 763 - 777*):

- Sections 763-765 provide that a Director may appoint an inspector :
 - where there are circumstances suggesting a contravention of Chapter 5 of Part 5 (disclosure of interests in shares and debentures); or
 - to determine the true ownership of a company.
- Section 766 provides for the payment of expenses of an investigation of company ownership.

Chapter 3 – Investigations initiated by Director

- Section 767 provides that the Director may require specified information as to the persons interested in shares and debentures.
- Sections 768 to 771 provide that where there is a difficulty in finding out relevant facts about shares, the Director may place restrictions on those shares, and allows that the Director, or the Court, may lift those restrictions.
- Sections 772 to 774 provide that the Court may order the sale of those shares, and provides for related matters.

Chapter 3 – Investigations initiated by Director

- Section 775 allows for the continuance of certain restrictions.
- Section 776 provides that certain actions in relation to restricted shares shall constitute a category 2 offence.
- Section 777 provides that the provisions regarding restriction on shares shall also apply to debentures.

Chapter 4 – Miscellaneous provisions

Chapter 4 contains 19 sections (*ss 778 - 796*):

- Sections 778 to 784 set out the circumstances in which the Director of Corporate Enforcement may require a company or a third party to produce books or documents, allow for a Court order to that effect to be obtained, and provide for related matters.
- Section 785 states that a breach of the above requirements shall constitute a category 2 offence.

Chapter 4 – Miscellaneous provisions

- Section 786 provides for the payment of expenses in relation to the examination of books or documents.
- Sections 787 to 789 provide for a District Court judge to issue a search warrant if satisfied that reasonable grounds exist for suspecting that material information is to be found on any premises, and for related matters.
- Sections 790 to 796 provide for other matters in relation to the disclosure of information, books or documents.

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*This document contains a general summary of developments
and is neither a complete nor definitive statement of the law.
Specific legal advice should be obtained before taking action.*

Thank You.

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