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## PART 13

### ~~Investigations~~

## INVESTIGATIONS

### Chapter 1

#### Preliminary

#### **Interpretation (Part 13).**

**7~~36~~47.** (1) Any reference in this Part to share capital or relevant share capital in relation to a company is a reference to share capital that confers the right to vote in all circumstances at a general meeting of that company, and a reference to share shall be read accordingly.

(2) Any reference in *Chapter 2* or *4* to shares or share capital of, or a shareholding or an interest in shares, in a company or a body corporate includes a reference to-

- (a) membership of the company or body corporate; and
- (b) the rights or obligations attaching to such membership.

### Chapter 2

#### Investigations by court appointed inspectors

#### **Investigation of company's affairs by court appointed inspectors on application of company etc.**

**7~~37~~48.** (1) On the application of a person or persons specified in *subsection (2)*, the court may appoint one or more competent inspectors to investigate the affairs of a company in order to enquire into matters specified by the court and to report on those matters in such manner as the court directs.

- (2) The court may make the appointment on the application of any of the following persons:
- (a) the company;
  - (b) not less than 10 members of the company;
  - (c) a member or members holding one-tenth or more of the paid up share capital of the company (but shares held as treasury shares shall be excluded for the purposes of this paragraph);
  - (d) a director of the company; or
  - (e) a creditor of the company.
- (3) The court's power of appointment under *subsection (1)* is exercisable notwithstanding that the company is in the course of being wound up.
- (4) The court may require the applicant or the applicants to give security for payment of the costs of the investigation.
- (5) A person who intends making an application under this section shall give not less than 14 days' notice in writing of his or her intention to apply to the Director, and the Director shall be entitled to appear and be heard on the hearing of the application.
- (6) In this section "court" means –
- (a) save in the case of a company referred to in *paragraph (b)*, the High Court; or

(b) in the case of a company that, at the time of the making of the application under this section, falls to be treated as a small or medium company by virtue of *section 345L*, the Circuit Court, and, subject to *subsection (7)*, all subsequent references to the court in this Part shall, as respects the powers and jurisdiction of the court with respect to an investigation on foot of an appointment made under this section by the Circuit Court, be read accordingly.

(7) *Subsection (6)* does not confer jurisdiction on the Circuit Court to wind up any body corporate; however, that court, in exercise of its jurisdiction under this Part, may refer an inspectors' report made to it under this Part to the High Court which shall have the same jurisdiction to wind up any body corporate concerned as if the inspectors' report had been made to it in the first instance.

(8) In the case of an application under this section by a creditor or member to the Circuit Court, the application shall be made to the judge of the Circuit Court -

- (a) for the circuit in which the registered office of the company is situated at the time of the making of the application; or
- (b) if there is no registered office of the company at that time, for the circuit in which the creditor or member resides; or
- (c) if there is no registered office of the company at that time and the creditor or member resides outside the State, for the Dublin Circuit.

(9) In the case of an application under this section by the company or a director of it to the Circuit Court, the application shall be made to the judge of the Circuit Court -

- (a) for the circuit in which the registered office of the company is situated at the time of the making of the application; or
- (b) if there is no registered office of the company at that time, for the Dublin Circuit.

### **Investigation of company's affairs by court appointed inspectors on application of Director.**

**73849.** (1) On the application of the Director, the court may appoint one or more competent inspectors to investigate the affairs of a company and to report on those affairs in such manner as the court directs, if the court is satisfied that there are circumstances suggesting that-

- (a) the affairs of the company are being or have been conducted with intent to defraud-
  - (i) its creditors;
  - (ii) the creditors of any other person; or
  - (iii) its members;
- (b) the affairs of the company are being or have been conducted for a fraudulent or unlawful purpose other than described in *paragraph (a)*;
- (c) the affairs of the company are being or have been conducted in an unlawful manner;
- (d) the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to some part of its members;
- (e) the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to some or all of its creditors;
- (f) any actual or proposed act or omission of the company (including an act or

omission on its behalf) was, is or would be unfairly prejudicial to some part of its members;

- (g) any actual or proposed act or omission of the company (including an act or omission on its behalf) was, is or would be unfairly prejudicial to some or all of its creditors;
- (h) the company was formed for a fraudulent or unlawful purpose;
- (i) persons connected with its formation or the management of its affairs have, in that connection, been guilty of fraud, misfeasance or other misconduct towards the company or its members; or
- (j) the company's members have not been given all the information relating to its affairs which they might reasonably expect.

(2) The court's power of appointment under this section is without prejudice to its powers under *section 7~~37~~48* and is exercisable notwithstanding that the company is in the course of being wound up.

(3) Inspectors appointed under this section may be or include an officer or officers of the Director.

(4) A reference in *subsection (1)* to the members of a company shall have effect as if it included a reference to any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

(5) In this section "court" means –

- (a) save in the case of a company referred to in *paragraph (b)*, the High Court; or
- (b) in the case of a company that, at the time of the making of the application under this section, falls to be treated as a small or medium company by virtue of *section 345L*, the Circuit Court,

and, subject to *subsection (6)*, all subsequent references to the court in this Part shall, as respects the powers and jurisdiction of the court with respect to an investigation on foot of an appointment made under this section by the Circuit Court, be read accordingly.

(6) *Subsection (5)* does not confer jurisdiction on the Circuit Court to wind up any body corporate; however, that court, in exercise of its jurisdiction under this Part, may refer an inspectors' report made to it under this Part to the High Court which shall have the same jurisdiction to wind up any body corporate concerned as if the inspectors' report had been made to it in the first instance.

(7) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court -

- (a) for the circuit in which the registered office of the company is situated at the time of the making of the application; or
- (b) if there is no registered office of the company at that time, for the Dublin Circuit.

(8) Nothing in this section shall be taken as excluding or restricting any statutory rights of [the Government](#), a Minister of the Government or a person acting under the authority of [the Government](#) or a Minister of the Government.

**Court may give directions in relation to investigation.**

**73950.** Where the court appoints an inspector under *section 73748(1)* or *73849(1)*, the court may from time to time give such directions as it thinks necessary or expedient, whether to the inspector or any other person, including directions given with a view to ensuring that the investigation is carried out as quickly and inexpensively as possible.

**Power of inspector to expand investigation into affairs of related bodies corporate.**

**74051.** (1) ~~An~~ Subject to subsection (4), an inspector appointed under *section 73748(1)* or *73849(1)* may investigate the affairs of any other body corporate that is related to the company under investigation if the inspector -

- (a) considers that it is necessary for the purposes of the investigation; and
- (b) has first obtained the approval of the court.

(2) An inspector who investigates the affairs of a related body corporate shall report on those affairs to the extent that the inspector considers that the results of investigation of the related body corporate are relevant to the investigation of the company.

(3) Without prejudice to the application of *section 2(910)*, a body corporate that is related to a company includes, for the purposes of this section and *sections 7543* and *74455*, a body corporate with which the company has a commercial relationship, and a commercial relationship exists where goods or services are sold or given by one party to another.

(4) The Circuit Court shall only have jurisdiction to grant the approval referred to in subsection (1) if, at the time of the making of the application for such approval, the body corporate there referred to falls to be treated (or, if it were a company, would fall to be treated) as a small or medium company by virtue of section 351.

**Order for inspection of books or documents of company in liquidation.**

**74152.** (1) On the application of the Director, the court may make an order for the inspection by the Director of any books or documents in the possession of a company that is in the course of being wound up.

- (2) The company, every officer of the company and the liquidator shall –
  - (a) give the Director such access to the books or documents and facilities as are necessary for inspecting or taking copies of the books or documents as the Director may require; and
  - (b) give all assistance to the Director as it or he or she is reasonably able to give in connection with the Director's inspection of the books or documents.

(3) Nothing in this section shall be taken as excluding or restricting any statutory rights of the Government or a Minister of the Government or a person acting under the authority of the Government or a Minister of the Government.

**Expanded meaning of “officer” and “agent” for purposes of sections 7543 to 74758.**

**74253.** In *sections 7543* to *74758* -

- (a) any reference to officers and agents includes past, as well as present, officers and agents; and
- (b) “agents”, in relation to a company or related body corporate, includes -

- (i) the bankers and solicitors of the company or other body corporate; and
- (ii) any persons employed by the company or other body corporate as auditors, accountants, book-keepers or taxation advisers, or other persons employed by it in a professional, consultancy or similar capacity, whether those persons are (or were) or are not (or were not) officers of the company or other body corporate.

**Duty of company officer or agent to produce books or documents and give assistance.**

**7543.** (1) Every person who is an officer or agent of a company under investigation by an inspector appointed under *section 73748(1)* or *73849(1)* or of a related body corporate under investigation under *section 74051* shall -

- (a) produce to the inspector all books or documents of or relating to the company or the related body corporate, as the case may, that are in that person's possession or under that person's control;
- (b) attend before the inspector when required to do so; and
- (c) otherwise give the inspector all assistance in connection with the investigation that that person is reasonably able to give.

(2) The production by a person of a book or document under this section is without prejudice to any lien that that person may claim over the book or document.

**Inspector may require other persons to produce books or documents and give assistance.**

**74455.** (1) This section applies if an inspector appointed under *section 73748(1)* or *73849(1)* considers that a person who is not an officer or agent of the company or related body corporate under investigation possesses or may possess any information concerning the affairs of the company or related body corporate, as the case may be.

(2) In any case to which this section applies, the inspector may require the person in question to -

- (a) produce to the inspector all books or documents of or relating to the company or the related body corporate, as the case may be, that are in that person's possession or under that person's control;
- (b) attend before the inspector when required to do so; and
- (c) otherwise give the inspector all assistance in connection with the investigation that that person is reasonably able to give.

(3) A person of whom a requirement is made under *subsection (2)* shall comply with that requirement.

(4) The production by a person of a book or document under this section is without prejudice to any lien that that person may claim over the book or document.

**Supplementary power to compel production of books or documents in relation to certain banking transactions.**

**7456.** (1) This section applies if an inspector appointed under *section 73748(1)* or *73849(1)* has reasonable grounds for believing that a director (the "director") of the company or related body corporate under investigation maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the State or elsewhere, into or out of which there has been paid money described in *subsection (2)*.

- (2) The money referred to in *subsection (1)* ~~is~~ is -
- (a) any money that has resulted from, or been used in, the financing of any transaction, arrangement or agreement –
    - (i) particulars of which have not been disclosed in a note to the financial statements of any company for any financial year as required by *section 3048*, ~~3059~~ or ~~3106~~;
    - (ii) in respect of which any amount outstanding was not included in the aggregate amounts outstanding in respect of certain transactions, arrangements or agreements as required by *section 30812* to be disclosed in a note to the financial statements of any company for any financial year;
    - (iii) particulars of which were not included in any register of certain transactions, arrangements and agreements as required by *section 30913(1)* or ~~section corresponding to B10, Head 17, 1115~~ (including the latter as it is applied by this Act to companies other than public limited companies); or
  - (b) any money that has been in any way connected with any act or omission, or series of acts or omissions, that on the part of the director constituted misconduct (whether fraudulent or not) towards the company or body corporate under investigation or its members.
- (3) In any case to which this section applies, the inspector may require the director to produce to the inspector all books or documents in the director's possession or under his or her control relating to the bank account referred to in *subsection (1)* and the director shall comply with that requirement.
- (4) In this section -
- “bank account” includes an account with any person who is exempt, by virtue of section 7(4) of the Central Bank Act 1971, from the requirement of holding a licence under section 9 of that Act;
  - “director” includes any present or past director or any person connected, within the meaning of *section 2217*, with that director and any present or past shadow director.

**Power of inspector to examine officers, agents and others.**

~~74657~~. (1) An inspector appointed under *section 73748(1)* or ~~73849(1)~~ may examine the following persons on oath in relation to the affairs of the company or related body corporate under investigation:

- (a) an officer or agent of the company or related body corporate; and
- (b) a person referred to in *section 74455*;

and an examination under this section of an officer or agent of the company may relate to the related body corporate (as well as the company) and *vice versa*.

- (2) The inspector may conduct the examination orally or through written questions and for the purpose of the examination may -
- (a) administer an oath; and
  - (b) reduce to writing the answers of the person being examined and require that person to sign them.

**Court may make order in relation to default in production of books or documents, etc.**

- 74758.** (1) The court may make any order or give any direction it thinks fit if -
- (a) an officer or agent of a company or related body corporate under investigation or a person referred to in *section 74455* refuses or fails within a reasonable time to -
    - (i) produce to the inspectors any book or document that it is that person's duty under *sections 7543* to *7456* to produce;
    - (ii) attend before the inspectors when required to do so; or
    - (iii) answer a question put to that person by the inspectors with respect to the affairs of the company or other body corporate as the case may be;
  - (b) the inspectors have certified the refusal or failure to the court in a certificate signed by them; and
  - (c) the court has taken the steps set out in *subsection (2)*.
- (2) The court may make an order or give a direction under *subsection (1)* if the court has -
- (a) enquired into the case;
  - (b) heard any witnesses who may be produced against or on behalf of the person alleged to be in default; and
  - (c) heard any statement made in that person's defence.
- (3) Without prejudice to the generality of *subsection (1)*, the court may, after a hearing under *subsection (2)*, direct that the person concerned -
- (a) attend or re-attend before the inspectors or produce particular books or documents or answer particular questions put to that person by the inspectors; or
  - (b) need not produce a particular book or document or answer a particular question put to that person by the inspectors.

**Report of inspectors appointed under *section 73748(1)* or *73849(1)*.**

**74859.** (1) Inspectors appointed under *section 73748(1)* or *73849(1)* may, and if directed by the court shall, make interim reports to the court, and on conclusion of the investigation shall make a final report to the court.

(2) Notwithstanding anything in *subsection (1)*, an inspector appointed under *section 73748(1)* or *73849(1)* may at any time in the course of the investigation, without the necessity of making an interim report, inform the court of matters coming to his or her knowledge as a result of the investigation that tend to show that an offence has been committed.

**Distribution of inspectors' report.**

**74960.** (1) The court shall provide a copy of every inspectors' report to the Director.

- (2) The court may -
- (a) forward a copy of an inspectors' report to the registered office of the company that is the subject of the report;
  - (b) provide a copy of an inspectors' report on request and on payment of the prescribed fee to any of the following:
    - (i) a member of the company or other body corporate that is the subject of the report;
    - (ii) a person whose conduct is referred to in the report;
    - (iii) the statutory auditors of the company or other body corporate;
    - (iv) if other than the Director, the person or persons who applied for the

- appointment of the inspectors;
  - (v) any other person (including an employee or creditor of the company or other body corporate) whose financial interests appear to the court to be affected by the matters dealt with in the report;
  - (vi) the Central Bank, if the report relates, wholly or partly, to the affairs of a licensed bank.
- (3) The court may provide a copy of an inspectors' report to -
  - (a) an appropriate authority in relation to any of the matters referred to in *section 78492(a)* to (i); or
  - (b) a competent authority as defined in *section 78293(2)*.
- (4) The court may cause an inspectors' report to be published in such form and manner as it thinks fit.
- (5) The court may direct that a particular part of an inspectors' report be omitted from a copy that is forwarded or provided under *subsection (2)* or *(3)* or a report that is printed and published under *subsection (4)*.
- (6) In this section "inspectors' report" means a report made under *section 74859*.

**Court may make order after considering inspectors' report.**

**75061.** (1) After considering a report made under *section 74859*, the court may make such order as it thinks fit.

- (2) An order under *subsection (1)* may include -
  - (a) an order of the court's own motion for the winding up of a body corporate; or
  - (b) an order for remedying any disability suffered by any person whose interests were adversely affected by the conduct of the affairs of the company that is the subject of the report, provided that in making such an order the court shall have regard to the interests of any other person who may be adversely affected by the order.

**Director may present petition for winding up following consideration of report.**

**75162.** The Director may present a petition for the winding up of a body corporate on the ground that it is just and equitable to do so if the Director considers that such a petition should be presented having regard to -

- (a) a report made under *section 74859* by inspectors appointed under *section 73849(1)*; or
- (b) any information or document obtained by the Director under this Part.

**Expenses of investigation by court appointed inspector.**

**75263.** (1) The expenses of and incidental to an investigation by an inspector appointed under *section 73748(1)* or *73849(1)* shall be defrayed in the first instance by the relevant authority.

(2) The court may direct that a body corporate dealt with in the report or the applicant or applicants for the appointment of the inspector shall be liable to repay the relevant authority so much of the expenses as the court directs.

(3) Without prejudice to *subsection (2)* but subject to *subsection (5)*, where a court enters a

conviction or makes an order in a case set out in *subsection (4)*, the court may in the same proceedings order the person referred to in *subsection (4)* to repay the relevant authority or any person fixed with liability for expenses under *subsection (2)* so much of the expenses of and incidental to the investigation as the court directs.

- (4) The cases mentioned in *subsection (3)* are:
- (a) the court convicts the person on indictment of an offence on a prosecution instituted as a result of the investigation;
  - (b) the court orders the person to pay damages or restore any property in proceedings brought as a result of the investigation; or
  - (c) the court awards damages to or orders the restoration of property to the person in proceedings brought as a result of the investigation.
- (5) Where a court makes an order for payment of expenses under *subsection (3)* against a person to whom *subsection (4)(c)* relates -
- (a) the court shall not order payment of expenses that are more than one-tenth of the amount of the damages awarded or of the value of the property restored, as the case may be; and
  - (b) the order shall not be executed until the person concerned has received the damages or the property has been restored.
- (6) In the light of his or her investigation, an inspector may or, if the court so directs, shall recommend in his or her report what directions (if any) he or she considers to be appropriate under *subsection (2)*.
- (7) In this section “relevant authority” means –
- (a) in the case of an appointment of an inspector or inspectors under *section 73748(1)*, the Minister for Justice and Equality;
  - (b) in the case of an appointment of an inspector or inspectors under *section 73849(1)*, the Director.

### Chapter 3

#### Investigations initiated by Director

##### **Investigation of share dealing by inspector appointed by Director.**

**73364.** (1) If the Director considers that there are circumstances suggesting that a contravention of *Chapter 5 of Part 5* has occurred in relation to shares in or debentures of a company, the Director may appoint one or more competent inspectors to -

- (a) investigate whether such a contravention has occurred; and
  - (b) report the results of the investigation to the Director.
- (2) The appointment under this section of an inspector may limit the period to which his or her investigation is to extend or confine it to shares or debentures of a particular class or both.
- (3) For the purposes of an investigation under this section, *sections 74253 to 74657* shall apply -
- (a) with the substitution, for references to any other body corporate whose affairs are investigated by virtue of *section 74051*, of a reference to any other body corporate that is, or has at any relevant time been, the company’s subsidiary or

- holding company or a subsidiary of the company's holding company; and
- (b) with the necessary modification of the reference in *section 74657* to the affairs of the company or other body corporate, so, however, it shall apply to members of an authorised market operator who are individuals and to officers (past and present) of members of such an authorised market operator who are bodies corporate as it applies to officers of the company or body corporate.
- (4) The inspector may, and if directed by the Director, shall make interim reports to the Director, and on the conclusion of the investigation shall make a final report to the Director.
- (5) An inspector's interim or final report shall be written or printed as the Director shall direct, and the Director may cause it to be published.
- (6) *Sections 74051, 74758, 769* to *75678, 78596* (other than *subsection (8)*) and *86982(4)* shall, with any necessary modifications, apply for the purposes of this section.
- (7) The expenses of an investigation under this section shall be defrayed by the Director.
- (8) Where a person is convicted on indictment of an offence on a prosecution instituted as result of an investigation under this section, the court may, on the application of the Director, order that person to pay all or part of the expenses of the investigation as the court may direct.

**Investigation of company ownership by inspector appointed by Director.**

- 7654.** (1) Subject to *subsection (2)* and *section 79801(5)*, the Director may appoint one or more competent inspectors to investigate and report on the membership of a company or on any other matter in relation to the company for the purpose of determining the true persons who are or have been -
- (a) financially interested in the success or failure (real or apparent) of the company; or
- (b) able to control or materially to influence the policy of the company.
- (2) The Director may make an appointment under *subsection (1)* if the Director considers that it is necessary-
- (a) for the effective administration of the law relating to companies;
- (b) for the effective discharge by the Director of his or her functions; or
- (c) in the public interest.
- (3) The appointment of an inspector under this section may define the scope of his or her investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.
- (4) Subject to the terms of an inspector's appointment, the inspector's powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding that -
- (a) although not legally binding, is or was observed or was likely to be observed in practice; and
- (b) is relevant to the purposes of the investigation.

**Application of certain provisions to investigation of company ownership.**

**75566.** (1) For the purposes of an investigation under *section 7654*, *sections 74951* and *74253* to *74960* shall, with the necessary modifications of references to the affairs of the company or to those of any other body corporate, apply in accordance with *subsections (2)* and *(3)* and subject to *subsection (4)*.

(2) The provisions referred to in *subsection (1)* shall apply in relation to the following persons in the same way that they apply to officers and agents of the company or other body corporate whose ownership is being investigated, as the case may be:

- (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure (real or apparent) of the company or other body corporate;
- (b) all persons who are able to control or materially to influence the policy of the company or the other body corporate, including persons concerned only on behalf of others;
- (c) any other person whom the inspector has reasonable to cause to believe has information relevant to the investigation.

(3) For the references to the court (except in *section 74758*) there shall be substituted references to the Director.

(4) The Director may -

- (a) where he or she considers that there is good reason for not divulging any part of a report made by virtue of this section, disclose the report with that part omitted;
- (b) where he or she discloses the report with a part omitted under *paragraph (a)*, ensure that a copy of the report with that part omitted is kept by the Registrar; and
- (c) where he or she discloses the report without an omission under *paragraph (a)*, ensure that a copy of the whole report is kept by the Registrar.

**Expenses of investigation of company ownership.**

**7567.** (1) On the application of the Director, the court may direct a company that is the subject of an investigation under *section 7654* to repay to the Director so much of the expenses of and incidental to the investigation as the court directs.

(2) Without prejudice to *subsection (1)* but subject to *subsection (3)*, where a court enters a conviction or makes an order in a case set out in *subsection (3)* the court may, in the same proceedings, order the person referred to in *subsection (3)* to pay to the Director so much of the expenses of and incidental to an investigation under *section 7654* as the court directs.

(3) The cases referred to in *subsection (2)* are where the court -

- (a) convicts the person on indictment of an offence on a prosecution instituted as a result of the investigation;
- (b) orders the person to pay damages or restore any property in proceedings brought as a result of the investigation; or
- (c) awards damages to or orders the restoration of property to the person in proceedings brought as a result of the investigation.

(4) Where the court makes an order for payment of expenses under *subsection (2)* against a

person to whom *subsection (3)(c)* relates -

- (a) the court shall not order payment of expenses that are more than one-tenth of the amount of the damages awarded or of the value of the property restored, as the case may be; and
- (b) the order shall not be executed until the person concerned has received the damages or the property has been restored.

**Director's power to require information as to persons interested in shares or debentures.**

**75768.** (1) This section applies if the Director considers that an investigation of the ownership of the shares in or debentures of a company is necessary for any of the reasons set out in *section 7654(2)* but that it is unnecessary to appoint an inspector for the purpose.

(2) In any case to which this section applies, the Director may, subject to *section 79801(5)*, require a person to give the following information to the Director if the Director has reasonable cause to believe that the person has or is able to obtain the information:

- (a) any information as to the past and present interests in the shares or debentures;
- (b) the names and addresses of the persons interested in the shares or debentures; or
- (c) the names and addresses of the persons who act or have acted on behalf of the persons referred to in *paragraph (b)* in relation to the shares.

(3) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if -

- (a) that person has any right to acquire or dispose of the share or debenture or any interest in it;
- (b) that person has any right to vote in respect of the share or debenture;
- (c) the consent of that person is necessary for the exercise of any of the rights of other persons interested in the share or debenture; or
- (d) other persons interested in the share or debenture can be required or are accustomed to exercise their rights in accordance with that person's instructions.

(4) A person shall be guilty of a category 2 offence if that person, when required to give any information under this section -

- (a) fails to give the information to the Director; or
- (b) makes any statement to the Director false in a material particular knowing it to be so false or being reckless as to whether it is so false.

(5) Without prejudice to *subsection (4)*, if a person fails to give information to the Director under this section when required by the Director to do so, the court, on application by the Director, and having given the person an opportunity to be heard, may make an order requiring the person to comply with the Director's requirement.

(6) In making an order under *subsection (5)*, the court may order the third party to pay all costs of and incidental to the application.

**Director may impose restrictions on shares.**

**75869.** (1) Where, in connection with an investigation under *section 7654* or an enquiry under

*section 7~~57~~68*, the Director considers that there is any difficulty in finding out the relevant facts about any shares (whether issued or to be issued), the Director may, by notice in writing, direct that the shares shall, subject to further notice, be subject to the restrictions imposed by this section.

(2) The following restrictions apply to the shares referred to in *subsection (1)* for as long as the direction in respect of the shares is in force:

- (a) any transfer of the shares shall be void or, if the shares are unissued, any transfer of the right to be issued with the shares shall be void and any issue of the shares shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder of the shares; and
- (d) no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where shares are subject to the restrictions imposed by *subsection (2)(a)*, any agreement -

- (a) to transfer the shares shall be void; or
- (b) in the case of unissued shares, to transfer the right to be issued the shares shall be void.

(4) However, *subsection (3)* shall not apply to an agreement to sell the shares under *section 7~~59~~70(1)(b)* or *7~~64~~72(2)(c)*.

(5) Where shares are subject to the restrictions imposed by *subsection (2)(c)* or *(d)*, any agreement -

- (a) to transfer any right to be issued other shares in right of the shares shall be void; and
- (b) to receive any payment on those shares shall be void.

(6) However, *subsection (5)* shall not apply to an agreement to transfer any right to be issued other shares on the sale of the shares under *section 7~~64~~72(2)(c)*.

**Director may lift restrictions imposed on shares under *section 7~~58~~69*.**

**7~~59~~70.** (1) The Director may direct that the restrictions imposed upon shares under *section 7~~58~~69* shall cease to apply if -

- (a) the Director is satisfied that the relevant facts about the shares have been disclosed to him or her; or
- (b) the shares are to be sold and the court or the Director approves the sale.

(2) However, this section does not affect a direction of the Director directing that any restriction continued in force in relation to the shares under *section 776~~5~~* shall cease to apply to the shares.

**Director shall give notice of direction.**

**7~~60~~71.** As soon as practicable after giving a direction under *section 7~~58~~69* or *7~~59~~70*, the Director shall cause notice of the direction to be -

- (a) sent to the company concerned at its registered office;
- (b) delivered to the Registrar; and

- (c) published in the CRO Gazette.

**Court may lift restrictions imposed on shares under *section 75869*.**

~~76172~~. (1) Where the Director directs that shares shall be subject to the restrictions imposed under *section 75869* or refuses to direct that such restrictions shall cease to apply to the shares, any person aggrieved by the direction or refusal of the Director may apply to the court for an order that the restrictions shall cease to apply to the shares.

(2) The court may make an order under *subsection (1)* if -

- (a) the court is satisfied that the relevant facts about the shares have been disclosed to the company or, as the case requires, to the Director;
- (b) the court is satisfied that it is otherwise equitable to lift the restrictions; or
- (c) the shares are to be sold and the court approves the sale.

(3) This section does not affect an order of the court that any restriction continued in force in relation to the shares under *section 7765* shall cease to apply to the shares.

**Court may order sale of shares.**

~~76273~~. (1) Where any shares are subject to the restrictions imposed under *section 75869*, the court, on the application of a person specified in *subsection (2)*, may -

- (a) order that the shares shall be sold, subject to the approval of the court as to sale; and
- (b) also direct that the restrictions imposed under *section 75869* shall cease to apply to the shares.

(2) The court may make the order under *subsection (1)* on the application of -

- (a) the Director; or
- (b) the company, if the company has given notice of the application to the Director.

(3) Where the court has made an order that the shares shall be sold, on the application of a person specified in *subsection (4)* the court may make any further order relating to the sale or to the transfer of the shares as it sees fit.

(4) The court may make a further order under *subsection (3)* on the application of -

- (a) the Director;
- (b) the company;
- (c) the person appointed under the order for sale to effect the sale; or
- (d) any person interested in the shares.

**Costs of applicant for order for sale of shares.**

**76374.** (1) Where the court makes an order under *section 76273*, the court may order that the costs of the applicant shall be paid out of the proceeds of the sale of the shares.

(2) Where an order for costs is made under *subsection (1)*, the applicant shall be entitled to payment of costs out of the proceeds of sale before any person interested in the shares sold receives any part of those proceeds.

**Proceeds of sale following court ordered sale of shares.**

**76475.** (1) Where shares are sold pursuant to an order made by the court under *section 76273*

- 
- (a) the proceeds of sale, less the costs of sale, shall be paid into court for the benefit of the persons who are beneficially interested in the shares; and
  - (b) any such person may apply to the court for the whole or part of the proceeds to be paid to that person.

(2) On an application under *subsection (1)(b)*, the court shall order -

- (a) if no other person was beneficially interested in the shares at the time of sale, the payment to the applicant under *subsection (1)(b)* of the whole of the proceeds of sale after deduction of the amount of any costs awarded under *section 76374(1)* and any interest accrued on those proceeds; or
- (b) if any other person was beneficially interested in the shares at the time of sale, the payment to the applicant under *subsection (1)(b)* of such proportion of the proceeds of sale after the deduction of the amount of any costs awarded under *section 76374(1)* and any interest accrued on those proceeds as is equal to the proportion that the value of the applicant's interest in the shares bears to the total value of the shares.

### **Continuance of certain restrictions.**

**776s.** (1) This section applies to -

- (a) a direction under *section 75970* or an order of the court under *section 76472* expressed to be given or made with a view to permitting a transfer of the shares in question; or
- (b) an order under *section 76273* for the sale of the shares in question.

(2) Any direction or order to which this section applies may continue the restrictions referred to in *section 75869(2)(c)* and *(d)* in whole or in part, so far as they relate to any right acquired or offer made before the transfer of the shares in question.

(3) Any such continuance provided by a foregoing direction or order may be varied or cancelled by a subsequent direction of the Director or, as the case may be, by a subsequent order of the court (power to provide for which variation or cancellation is conferred on the Director and the court, respectively, by this subsection).

### **Offences in relation to shares that are subject to restrictions.**

**76677.** (1) A person who does any of the following shall be guilty of a category 2 offence:

- (a) exercises or purports to exercise any right to dispose of -
  - (i) any shares that, to the person's knowledge, are for the time being subject to the restrictions imposed under *section 75869*; or
  - (ii) any right to be issued with any such shares;
- (b) votes in respect of shares that are subject to the restrictions imposed under *section 75869* or appoints a proxy to vote in respect of any such shares;
- (c) being the holder of shares that are subject to the restrictions imposed under

*section 75869*, fails to notify any other person of the restrictions where the holder knows that the other person is entitled, apart from the restrictions, to vote in respect of the shares whether as holder or proxy;

- (d) being the holder of shares that are subject to the restrictions imposed under *section 75869(2)(a)*, enters into an agreement that is void by virtue of *section 75869(3)(a)*;
- (e) being the holder of unissued shares that are subject to the restrictions imposed under *section 75869(2)(a)*, enters into an agreement that is void by virtue of *section 75869(3)(b)*;
- (f) being the holder of the right to be issued with other shares in right of shares that are subject to the restrictions imposed under *section 75869(2)(c)* and *(d)*, enters into an agreement that is void by virtue of *section 75869(5)(a)*;
- (g) being the holder of the right to receive payment on shares that are subject to the restrictions imposed under *section 75869(2)(c)* and *(d)*, enters into an agreement that is void by virtue of *section 75869(5)(b)*.

(2) Where any shares in a company are issued in contravention of the restrictions imposed under *section 75869*, the company and any officer of it who is in default shall be guilty of a category 2 offence.

**Application of *sections 75869* to *76677* to debentures.**

**7678.** *Sections 75869* to *76677* shall apply in relation to debentures as they apply in relation to shares.

## Chapter 4

### Miscellaneous provisions.

#### **Power of Director to require company to produce books or documents.**

**76879.** Subject to *section 76980*, the Director may give a direction to any company requiring it, at such time and place, and in such manner, as may be specified in the direction, to produce such books or documents as are specified in the direction.

#### **When Director may exercise power to require company to produce books or documents.**

**76980.** The Director may give the direction described in *section 76879* to a company if the Director considers that there are circumstances suggesting that -

- (a) it is necessary to examine the books or documents of the company with a view to determining whether an inspector should be appointed to investigate the company under this Act;
- (b) the affairs of the company are being or have been conducted with intent to defraud -
  - (i) its creditors;
  - (ii) the creditors of any other person; or
  - (iii) its members;
- (c) the affairs of the company are being or have been conducted for a fraudulent or unlawful purpose other than described in *paragraph (b)*;
- (d) the affairs of the company are being or have been conducted in an unlawful manner;
- (e) the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to some part of its members;

- (f) the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to some or all of its creditors;
- (g) any actual or proposed act or omission or series of acts or omissions of the company or on behalf of the company have been, are or would be unfairly prejudicial to some part of its members;
- (h) any actual or proposed act or omission of the company (including an act or omission on its behalf) was, is or would be unfairly prejudicial to some or all of its creditors;
- (i) any actual or proposed act or omission or series of acts or omissions of the company or on behalf of the company by an officer of the company acting in his or her capacity as such officer have been or are likely to be unlawful;
- (j) the company was formed for any fraudulent or unlawful purpose; or
- (k) the company may be in possession of books or documents containing information relating to the books or documents of a body that comes within the terms of one or more of *paragraphs (a) to (j)*.

**Power of Director to require third party to produce books or documents.**

~~770~~81. (1) Where, by virtue of *sections* ~~768~~79 and ~~769~~80, the Director has power to require the production of any books or documents from any company, the Director shall have power to require the production of -

- (a) those books or documents from any person who appears to the Director to be in possession of them;
- (b) copies of any books or documents of the company from any person who appears to the Director to be in possession of them; and
- (c) subject to *section* ~~772~~83, other books or documents (whether the originals of

them or otherwise) which may relate to any books or documents of the company from any person who appears to the Director to be in possession of such other books or documents.

(2) Any requirement under *subsection (1)* shall be made by the giving by the Director of a direction to the person of whom the requirement is being made that specifies –

- (a) the books or documents to be produced by the person; and
- (b) the time and place at which, and the manner in which, they are to be produced.

(3) The production by a person of a book or document under this section is without prejudice to any lien that that person may claim over the book or document.

**Saving in relation to *section 77081*, etc. and corresponding amendments effected to Act of 1990 by Companies (Amendment) Act 2009.**

**77182.** (1) In this section the “original amendments” means the amendments of section 19 of the Act of 1990 made by section 4(1) of the Companies (Amendment) Act 2009.

(2) Nothing in either –

- (a) the original amendments; or
- (b) *section 77081* or of any other section of this Chapter that makes similar provision to that made by those amendments,

shall be read to mean that, but for the effecting of those amendments or the making of such similar provision by any of those sections, a direction given by the Director, before the passing of the Companies (Amendment) Act 2009, under section 19(3) of the Act of 1990, was limited in any way as to its effect or extent of operation or that books or documents

produced on foot of it to the Director were not lawfully produced to him.

**Restriction on power of Director to require third party to produce certain books or documents**

~~772~~83. (1) The Director shall not exercise the power under *section 770*~~81~~81(1)(c) to require a person (in this section and *section 773*~~84~~84 referred to as the “third party”) to produce books or documents that may relate to any books or documents of a company unless -

- (a) the Director is of the opinion that there are reasonable grounds for believing that the books or documents required to be produced and the books or documents of the company are related to one another; and
- (b) subject to *subsection (4)*, the Director has first taken the steps set out in *subsection (2)*.

(2) The steps referred to in *subsection (1)(b)* are the following:

- (a) the Director shall notify the third party stating -
  - (i) that the Director proposes to require the third party to produce books or documents that may relate to books or documents of the company;
  - (ii) the grounds for the Director’s opinion referred to in *subsection (1)(a)*; and
  - (iii) that the third party may make submissions to the Director within 21 days after the date of the notification as to why the third party believes the opinion of the Director is erroneous; and
- (b) the Director shall have regard to those submissions before finally deciding whether to require the books or documents in question.

- (3) In *subsection (1)(a)*, the grounds for the opinion of the Director may include -
- (a) grounds related to the relationship between the company and the person required to produce the books or documents;
  - (b) a common origin of the books or documents; or
  - (c) other similar considerations.

- (4) The Director is not required to take the steps set out in *subsection (2)* if –
- (a) the Director considers that compliance with those steps could result in the concealment, falsification, destruction or disposal of the books or documents concerned; or
  - (b) the books or documents concerned are merely the originals of any books or documents, copies of which have previously been produced to the Director in compliance with an earlier requirement made in exercise of the power under *section 77081(1)(c)*.

(5) The third party shall not be obliged to comply with a requirement to produce documents in relation to a particular book or document if the third party would be entitled, by virtue of any law or enactment, to refuse to produce the book or document in any proceedings on the ground of any privilege (whether the privilege to which *section 78596* applies or not).

**Court may order third party to comply with requirement to produce books or documents.**

**77384.** (1) This section applies if a third party -

- (a) has failed to –
  - (i) comply with a requirement of the Director under *section 77081(1)(c)*

requiring the third party to produce books or documents; or

(ii) provide an explanation, make a statement or give assistance as required by *section 7485*;

and

(b) has, in either case, failed to remedy the default within 14 days after the date of service by the Director on the third party of a notice requiring the third party to remedy the default.

(2) In any case to which this section applies, the court, on the application of the Director, and having given the third party an opportunity to be heard, may order the third party to remedy the default within such time as the court specifies.

(3) In making an order under *subsection (2)*, the court may order the third party to pay all costs of and incidental to the application.

(4) Nothing in this section shall be taken to prejudice the operation of *section 7586(1)* and (2).

**Powers ancillary to power to require production of books or documents.**

**7485.** The power to require a company or other person to produce books or documents under *section 76879* or *77081* shall also include the following powers:

- (a) if the books or documents are produced, the power to take copies of or extracts from them;
- (b) if the books or documents are produced, the power to require the following persons to provide, as far as they are reasonably able to do so, an explanation

of any of the books or documents, including an explanation of any apparent omissions from them or of any omission of any book or document:

- (i) the person producing the books or documents;
  - (ii) a present or past officer of the company in question; or
  - (iii) a person who was or is employed by the company in question, including a person employed in a professional, consultancy or similar capacity;
- (c) if the books or documents are not produced, the power to require the person who was required to produce them to state, to the best of that person's knowledge and belief, where they are; and
- (d) the power to require the company or any of the persons specified in *paragraph (b)* to give all assistance to the Director as the company or the person is reasonably able to give in connection with an examination of the books or documents in question.

**Offences in relation to requirement to produce books or documents.**

**77586.** (1) Subject to *subsection (2)*, a person who fails to comply with a requirement under *section 76879*, *77081* or *77485* to produce books or documents or to provide an explanation or to make a statement shall be guilty of a category 2 offence.

(2) In any proceedings against a person in respect of an offence under *subsection (1)* consisting of a failure to comply with a requirement to produce books or documents, it shall be a defence to prove both that -

- (a) the books or documents were not in that person's possession or under that person's control; and

(b) it was not reasonably practicable for that person to comply with the requirement.

(3) A person who provides an explanation or makes a statement required under *section 773~~84~~* that is false or misleading in a material respect knowing it to be so false or misleading shall be guilty of a category 2 offence.

(4) Notwithstanding *section 282~~7~~*, a person who with notice of a direction given under *section 768~~79~~* or *770~~81~~* destroys, mutilates, falsifies or conceals any document that is the subject of the direction shall be guilty of a category 2 offence.

(5) A statement made or an explanation provided by an individual in compliance with a requirement under *section 774~~85~~* may be used against that person in any proceedings except proceedings for the prosecution of that person (other than for an offence under *subsection (1)* or *(3)*).

**Expenses relating to examination of books or documents.**

**787~~6~~.** (1) On the application of the Director, the court may direct that a company that is the subject of a direction given under *section 768~~79~~* shall be liable to repay the Director so much of the expenses of and incidental to the examination of books or documents produced as the court directs.

(2) Without prejudice to *subsection (1)* but subject to *subsection (4)*, where a court enters a conviction or makes an order in a case set out in *subsection (3)* the court may, in the same proceedings, order the person concerned to repay the Director so much of the expenses of and

incidental to an examination following a direction given under *section 76879* as the court directs.

(3) The cases referred to in *subsection (2)* are where the court -

- (a) convicts the person on indictment of an offence on a prosecution instituted as a result of the direction;
- (b) orders the person to pay damages or restore any property in proceedings brought as a result of the direction; or
- (c) awards damages to or orders the restoration of property to the person in proceedings brought as a result of the direction.

(4) Where a court makes an order for payment of expenses under *subsection (2)* against a person to whom *subsection (3)(c)* relates -

- (a) the court shall not order payment of expenses that are more than one-tenth of the amount of the damages awarded or of the value of the property restored, as the case may be; and
- (b) the order shall not be executed until the person concerned has received the damages or the property has been restored.

### **Entry and search of premises.**

**77788.** (1) A judge of the District Court may issue a search warrant under this section if satisfied by information on oath laid by a designated officer that there are reasonable grounds for suspecting that any material information is to be found on any premises (including a dwelling).

(2) A search warrant issued under this section shall be expressed and operate to authorise a named designated officer (the “officer”), accompanied by such other persons as the officer thinks necessary, at any time or times within the period of validity of the warrant, on production of the warrant if so requested, to -

- (a) enter the named premises, if necessary by force;
- (b) search the premises;
- (c) require any person found on the premises to -
  - (i) give to the officer his or her name, home address and occupation; and
  - (ii) produce to the officer any material information that is in the custody or possession of that person;
- (d) seize and retain any material information found on the premises or in the custody or possession of any person found on the premises; and
- (e) take any other steps that appear to the officer to be necessary for preserving or preventing interference with material information.

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(3) Without prejudice to *subsection (4)*, where –

- (a) the officer finds anything at, or in the custody or possession of any person found on, the premises named in the warrant that the officer has reasonable grounds for believing may be or may contain material information, and
- (b) it is not reasonably practicable for a determination to be made on the premises—
  - (i) whether what he or she has found is something that he or she is entitled to seize under the warrant (whether as mentioned in *subsection (2)(d)* or *(4)*); or
  - (ii) the extent to which what he or she has found contains something

that he or she is entitled to seize under the warrant in either of those cases,

the officer's powers of seizure under the warrant shall include power to seize so much of what he or she has found as it is necessary to remove from the premises to enable that to be determined (referred to subsequently in this section as an "extended power of seizure").

(4) Where—

(a) the officer finds anything at, or in the custody or possession of any person found on, the premises named in the warrant being a book, document or other thing constituting material information (referred to subsequently in this section as "seizable information") which he or she would be entitled to seize but for its being comprised in something else that he or she has (apart from this subsection) no power to seize; and

(b) it is not reasonably practicable for the seizable information to be separated, on those premises, from that in which it is comprised,

the officer's powers of seizure shall include power to seize both the seizable information and that from which it is not reasonably practicable to separate it (also referred to subsequently in this section as an "extended power of seizure").

(5) Where, for the purposes of *subsection (3) or (4)*, an issue arises as to either of the following matters, namely—

(a) whether or not it is reasonably practicable on particular premises for something to be determined;

or

(b) whether or not it is reasonably practicable on particular premises for something to be separated from something else,

the issue shall be decided by reference solely to the following matters:

- (i) how long it would take to carry out the determination or separation on those premises;
- (ii) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;
- (iii) whether the determination or separation would (or would if carried out on those premises) involve damage to property;
- (iv) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation;
- (v) the costs of carrying out the determination or separation on those premises as against the costs of carrying out the determination or separation in another place (being a place in which the Director can show it would be appropriate to do the thing concerned and in which the Director intends to arrange, or does arrange, for the thing to be done); and
- (vi) in the case of separation, whether the separation—
  - (I) would be likely, or
  - (II) if carried out by the only means that are reasonably practicable on those premises, would be likely, to prejudice the use of some or all of the separated seizable information for a purpose for which something seized under the warrant is capable of being used.

(6) *Section 789* supplements *subsections (3) to (5)* and, in particular, as regards the making

of arrangements for the storage of, and access to, things seized by virtue of an exercise of the extended power of seizure and for the maintenance of confidentiality as regards any confidential matter comprised in such a thing so seized.

(7) The officer may -

- (a) operate any computer at the place that is being searched or cause any such computer to be operated by a person accompanying the officer; and
- (b) require any person at that place who appears to the officer to be in a position to facilitate access to the information held in any such computer or that can be accessed by the use of that computer -
  - (i) to give to the officer any password necessary to operate it;
  - (ii) otherwise to enable the officer to examine the information accessible by the computer in a form in which the information is visible and legible; and
  - (iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.

(8) The power to issue a warrant under this section is in addition to and not in substitution for any other power to issue a warrant for the search of any place or person.

(9) The period of validity of a warrant shall be 1 month after the date of its issue but that period of validity may be extended in accordance with *subsections (10) and (11)*.

(10) The officer may, during the period of validity of a warrant (including such period as previously extended under *subsection (11)*), apply to a judge of the District Court for an order

extending the period of validity of the warrant and such an application shall be grounded upon information on oath laid by the officer stating, by reference to the purpose or purposes for which the warrant was issued, the reasons why he or she considers the extension to be necessary.

(11) If the judge of the District Court is satisfied that there are reasonable grounds for believing, having regard to that information so laid, that further time is needed so that the purpose or purposes for which the warrant was issued can be fulfilled, the judge may make an order extending the period of validity of the warrant by such period as, in the opinion of the judge, is appropriate and just; where such an order is made, the judge shall cause the warrant to be suitably endorsed to indicate its extended period of validity.

(12) Nothing in the preceding subsections prevents a judge of the District Court from issuing, on foot of a fresh application made under *subsection (1)*, a further search warrant under this section in relation to the same premises.

(13) In this section -

“computer” includes a personal organiser or any other electronic means of information storage or retrieval;

“computer at the place that is being searched” includes any other computer, whether at the place being searched or at any other place, that is lawfully accessible by means of that computer;

“designated officer” means the Director or a duly authorised officer of the Director;

“material information” means-

(a) any books or documents production of which has been required

under—

(i) any of the provisions applied by *sections 75566*, namely *sections 74051* and *74253* to *74960*; or

(ii) any of sections ~~757 and 768~~ *and 779* to *77081*,

and which have not been produced in compliance with that requirement;

or

(b) any books, documents or other things (including a computer) which the designated officer has reasonable grounds for believing may provide evidence of or be related to the commission of an offence under this Act.

(14) Notwithstanding the repeal of section 68(2) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005, the saving in that provision concerning section 20(3) of the Act of 1990 is not affected.

**Supplemental provisions in relation to *section 7788(3) to (5)*.**

~~7789~~. (1) In this section -

“extended power of seizure” shall be read in accordance with *section 7788(3)*

or

(4), as appropriate;

“material information” has the same meaning as it has in *section 7788*;

“officer” means the officer named as mentioned in *section 7788(2)* in the warrant concerned;

“seizable information” shall be read in accordance with *section 7788(4)*;

(2) Save where the officer is of opinion that compliance with this subsection could result in

the concealment, falsification, destruction or the disposal otherwise of material information, an extended power of seizure shall not be exercised unless the officer has first made the following arrangements in relation to the thing or things, the subject of the proposed exercise of that power, namely reasonable arrangements—

- (a) providing for the appropriate storage of that thing or those things;
- (b) allowing reasonable access, from time to time, to that thing or those things by the owner, lawful custodian or possessor thereof (including, in the case of documents or information in non-legible form, by the making of copies or the transmission of matter by electronic means); and
- (c) providing for confidentiality to be maintained as regards any confidential matter comprised in that thing or those things,

being arrangements to apply pending the making of the foregoing determination or the carrying out of the foregoing separation and the consequent return of anything to the owner, lawful custodian or possessor that is not material information.

(3) In deciding what the terms of those arrangements shall be, the officer shall have regard to any representations reasonably made on the matter by the owner, lawful custodian or possessor of the thing or things and endeavour, where practicable, to secure the agreement of that person to those terms.

(4) Where—

- (a) by reason of the officer being of the opinion referred to in *subsection (2)*, the arrangements referred to in *paragraphs (a) to (c)* of that subsection are not made in relation to the thing or things the subject of the proposed exercise of the extended power of seizure; or

(b) circumstances arise subsequent to the exercise of the extended power of seizure that make it appropriate to vary the arrangements made under that subsection, the officer shall, as the case may be—

(i) make, as soon as practicable after the exercise of that power of seizure, the arrangements referred to in *subsection (2)(a) to (c)* in relation to the thing or things concerned; or

(ii) vary the arrangements made under that subsection in a manner he or she considers appropriate,

(5) In deciding what shall be the terms of those arrangements or that variation, the officer shall have regard to any representations on the matter reasonably made by the owner, lawful custodian or possessor of the thing or things concerned and endeavour, where practicable, to secure the agreement of that person to those terms.

(6) Where an extended power of seizure is exercised, it shall be the duty of the officer—

(a) to carry out the determination or separation concerned as soon as practicable, and, in any event, subject to *subsection (7)*, within the prescribed period, after the date of its exercise; and

(b) as respects (as the case may be) –

(i) anything seized in exercise of the power found not to be material information; or

(ii) anything separated from another thing in the exercise of the power that is not material information,

to return, as soon as practicable, and, in any event, subject to *subsection (7)*, within the prescribed period, after the date of that finding or separation, the thing

to its owner or the person appearing to the officer to be lawfully entitled to the custody or possession of it.

(7) On application to the court by the Director or any person affected by the exercise of an extended power of seizure, the court may, if it thinks fit and having had regard, in particular, to any submissions made on behalf of the Director with regard to the progress of any investigation being carried on by the Director for the purpose of which the powers under this section had been exercised, give one or more of the following:

- (a) a direction that the doing of an act referred to in *subsection (6)(a) or (b)* shall be done within such lesser or greater period of time than that specified in that provision as the court determines;
- (b) a direction with respect to the making, variation or operation of arrangements referred to in *subsection (2)(a) to (c)* in relation to a thing concerned or a direction that such arrangements as the court provides for in the direction shall have effect in place of any such arrangements that have been or were proposed to be made;
- (c) a direction of any other kind that the court considers it just to give for the purpose of further securing the rights of any person affected by the exercise of an extended power of seizure, including, if the exceptional circumstances of the case warrant doing so, a direction that a thing seized be returned to its owner or the person appearing to the court to be lawfully entitled to the custody or possession of it, notwithstanding that the determination or separation concerned has not occurred.

(8) Any such direction may—

- (a) relate to some or all of the things the subject of the exercise of the extended power of seizure;

(b) be expressed to operate subject to such terms and conditions as the court specifies, including, in the case of a direction under *subsection (7)(c)*, a condition that an officer of the Director be permitted, during a specified subsequent period, to re-take and retain possession of the thing returned for the purpose of carrying out the determination or separation concerned (and, retain after the expiry of that period, that which is found to be material information or is material information).

(9) An application under *subsection (7)* shall be by motion and may, if the court directs, be heard otherwise than in public.

(10) In *subsection (6)* “prescribed period” means—

(a) in the case of *paragraph (a)* of it—

(i) unless *subparagraph (ii)* applies, 3 months;

or

(ii) such other period as the Minister prescribes in consequence of a review that may, from time to time, be carried out by or on behalf of the Minister of the operation and implementation of *section 7788(3)* to (5) and this section;

(b) in the case of *paragraph (b)* of it—

(i) unless *subparagraph (ii)* applies, 7 days, or

(ii) such other period as the Minister prescribes in consequence of such a review that may, from time to time, be carried out by or on behalf of the Minister,

but no regulations made to prescribe such a period shall be read as operating to affect any direction given by the court under *subsection (7)(a)* in force on the commencement

of those regulations.

(11) The Minister may make regulations providing for such supplementary, consequential and incidental matters to or in respect of *section 7788(3) to (5)* and *subsections (2) to (6)* of this section as he or she considers necessary or expedient.

**Offences in relation to entry and search of premises and provisions catering for certain contingencies concerning designated officers.**

**790.** (1) A person shall be guilty of a category 2 offence if that person -

- (a) obstructs the exercise of a right of entry or search conferred by a search warrant issued under *section 7788*;
- (b) obstructs the exercise of a right conferred by a search warrant issued under *section 7788* to seize and retain material information (as defined in *section 7788(13)*);
- (c) fails to comply with a requirement under *section 7788(2)(c)* or gives a name, address or occupation that is false or misleading; or
- (d) fails to comply with a requirement under *section 7788(7)(b)*.

(2) If, at any time after a search warrant has been issued under *section 788* —

(a) the designated officer named therein (including any designated officer who is named therein by reason of any prior application under this subsection)—

(i) has ceased to be an officer of the Director (by reason of death, retirement, resignation, dismissal, reassignment or any other cause);

or

(ii) is otherwise unable to perform his or her functions (by reason of absence from duty, illness, incapacity or any other cause);

or

(b) the Director has reasonable grounds for apprehending that any of the circumstances referred to in *paragraph (a)* is likely to arise,

then another designated officer may apply to a judge of the District Court for an order under *subsection (3)*.

(3) On the hearing of an application under *subsection (2)* the judge of the District Court may, if—

(a) the judge is satisfied that it is appropriate to do so; and

(b) the date to be specified under *paragraph (ii)* will fall during the period of validity of the warrant (including, if that is the case, such period as extended under *section 788(11)*),

make an order directing that the search warrant be endorsed so as to—

(i) substitute the name of another designated officer (the “new officer”) for the name of the designated officer who was expressed to have been authorised under the search warrant immediately prior to the making of the order (the “previous officer”); and

(ii) specify the time and date from which that substitution is to take effect.

(4) Where an order under *subsection (3)* is made then, with effect from the time on the date

endorsed pursuant to *paragraph (ii)* of that subsection —

(a) the search warrant shall continue in full force and effect, but shall operate to authorise the new officer to execute the warrant as fully as if he or she had been the designated officer named in the warrant when it was first issued;

(b) the search warrant shall no longer operate to authorise the previous officer to execute the warrant (but without prejudice to the validity of anything done previously thereunder by that officer); and

(c) the order shall operate to—

(i) relieve the previous officer from any duties to which he or she had been subject under *section 789(4), (5) or (6)* (but without prejudice to the validity of anything done previously thereunder by that officer); and

(ii) impose upon the new officer any duties under *section 789(4), (5) or (6)* that have not yet been fully discharged.

(5) If —

(a) the period of validity of a search warrant issued under *section 788* (including, if that is the case, such period as extended under *section 788(11)*) has expired; and

(b) either of the conditions specified in *subsection (2)(a) or (b)* is satisfied,

then a designated officer may apply to a judge of the District Court for an order providing for each of the matters referred to in *subsections (3) and (4)*, other than those relating to the conferral or removal of the power of execution, and, on the making of such an application, the judge of the District Court may make such an order accordingly and *subsections (3) and*

(4) shall apply for that purpose with any necessary modifications.

(6) For the purpose of subsection (5), subsection (2)(a) shall apply as if for “(including any designated officer who is named therein by reason of any prior application under this subsection)” there were substituted “(including any designated officer who is named therein by reason of any prior application under this subsection or subsection (5))”.

(7) An application under subsection (2) or (5) may, if a judge of the District Court directs, be heard otherwise than in public.

#### **Restriction on disclosure of information, books or documents.**

~~780~~91. (1) No information, book or document relating to a company that has been obtained under any of sections ~~768~~79 to ~~770~~81, ~~773~~84 or ~~777~~88 shall be published or disclosed unless -

- (a) the company consents to the publication or disclosure;
- (b) the publication or disclosure is, in the opinion of the Director, required under any of section ~~781~~92(a) to (m); or
- (c) the publication or disclosure is made to a competent authority specified in section ~~782~~93.

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(2) A person who publishes or discloses any information, book or document in contravention of subsection (1) shall be guilty of a category 2 offence.

#### **Information, books or documents may be disclosed for certain purposes**

~~781~~92. Any information, book or document relating to a company (the “company”) that has been obtained under any of sections ~~768~~79 to ~~770~~81, ~~773~~84 or ~~777~~88 may be published or

disclosed without the consent of the company if, in the opinion of the Director, publication or disclosure is required- =

- (a) with a view to the investigation or prosecution of any offence under -
  - (i) this Act;
  - (ii) the Central Bank Acts 1942 to 2010;
  - (iii) the Exchange Control Acts 1954 to 1990;
  - (iv) the Insurance Acts 1909 to 2000;
  - (v) the Taxes Consolidation Act 1997 or an offence under an enactment referred to in section 1078(1) of that Act; or
  - (vi) regulations relating to insurance made under the European Communities Act 1972;
- (b) with a view to the investigation or prosecution of any offence entailing misconduct in connection with the management of the company's affairs or the misapplication or wrongful retention of its property;
- (c) for the purpose of –
  - (i) assessing the liability of a person in respect of a tax or duty or other payment owed or payable to –
    - (I) the State;
    - (II) a local authority and, where the context so requires, a joint body (within the meaning of the Local Government Act 2001);
    - or
    - (III) the Health Services Executive;
  - or
  - (ii) collecting an amount due in respect of such tax or duty or other payment;

- (d) for the purpose of the performance by a tribunal (to which the Tribunals of Inquiry (Evidence) Acts 1921 to 2004 apply) of any of its functions;
- (e) for the purpose of assisting or facilitating the performance by any Minister of the Government of any or his or her functions;
- (f) for the purpose of assisting or facilitating the performance by any accountancy or other professional organisation of its disciplinary functions with respect to any of its members;
- (g) for the purpose of the performance by the Irish Takeover Panel or any authorised market operator established in the State of any of its functions in relation to the company or any other person who, in its opinion, is connected with the company;
- (h) for the purpose of the performance by the Competition Authority of any of its functions;
- (i) for the purpose of the performance by a committee (being a committee within the meaning of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 as amended, to which sections 3 to 14 and 16 of that Act apply) of any of its functions;
- (j) for the purpose of complying with the requirements of procedural fairness, to be made to -
  - (i) any company in relation to which an inspector has been appointed under *section 7~~53~~64* or *7~~6~~54*;
  - (ii) any person required by the Director to give any information under *section 7~~57~~68*;
  - (iii) any company to which the Director has given a direction under *section*

76879; or

- (iv) any person named in a report or other document prepared by the Director, in the ordinary course of administration, in consequence of the exercise of powers under *section* ~~757 or 768~~ or 779;
- (k) for the purpose of complying with any requirement, or exercising any power, imposed or conferred by this Part ~~or section~~ ~~[section corresponding to Part B10, Head 11]~~ with respect to reports made by inspectors who have been appointed, under this Part or that section, by the court or by the Director;
- (l) with a view to the institution by the Director of proceedings for the winding up under this Act of the company or otherwise for the purposes of proceedings instituted by him or her for that purpose; or
- (m) for the purpose of proceedings under *section* ~~777~~88 or ~~843~~.

**Information, books or documents may be disclosed to competent authority.**

~~782~~93. (1) Any information, book or document relating to a company that has been obtained under any of *sections* 76879 to 77081, 77384 or 77788 may be disclosed to a competent authority without the consent of the company.

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- (2) For the purposes of *subsection (1)*, a competent authority includes -
  - (a) the Minister;
  - (b) a person authorised by the Minister;
  - (c) an inspector appointed under this Act;
  - (d) the Registrar;
  - (e) the Minister for Finance;

- (f) an officer authorised by the Minister for Finance;
- (g) the Supervisory Authority;
- (h) any court of competent jurisdiction;
- (i) a supervisory authority within the meaning of regulations relating to insurance made under the European Communities Act 1972;
- (j) the Central Bank ; or
- (k) any authority established outside the State in which there are vested-
  - (i) functions of investigating or prosecuting an offence similar to an offence referred to in *section 78192(a) or (b)*;
  - (ii) functions of assessing the liability of a person in respect of a tax or duty or other payment owed or payable to the state in which it is established or any other authority established in that state;
  - (iii) functions of collecting an amount due in respect of a tax or duty or other payment referred to in *subparagraph (ii)*; or
  - (iv) functions that are similar to the functions referred to in any of *section 78192(d) to (g)*.

**Offence of falsifying, concealing, destroying or otherwise disposing of document or record.**

**78394.** (1) A person shall be guilty of a category 2 offence who -

- (a) knows or suspects that-
  - (i) an investigation by the Director into an offence under this Act is being or is likely to be carried out; and
  - (ii) a document or record is or would be relevant to the investigation; and

- (b) either -
  - (i) falsifies, conceals, destroys or otherwise disposes of that document or record; or
  - (ii) causes or permits the falsification, concealment, destruction or other disposal of that document or record.

(2) Subject to *subsection (3)*, where a person falsifies, conceals, destroys or otherwise disposes of a document or record, or causes or permits its falsification, concealment, destruction or other disposal, in such circumstances that it is reasonable to conclude that the person knew or suspected that -

- (a) an investigation by the Director into an offence under this Act was being or was likely to be carried out; and
- (b) a document or record was or would be relevant to the investigation,

that person shall be taken for the purposes of this section to have so known or suspected.

(3) *Subsection (2)* does not apply if the court or the jury, as the case may be, is satisfied, having regard to all the evidence, that there is reasonable doubt as to whether the person so knew or suspected.

**Production and inspection of books or documents when offence suspected.**

**78495.** (1) This section applies if, on an application to the District Court by a person specified in *subsection (3)*, there is shown to be reasonable cause to believe that -

- (a) a person has, while an officer of a company, committed an offence in connection with the management of the company's affairs; and
- (b) evidence of the commission of the offence is to be found in -

- (i) any books or documents of or under the control of the company; or
  - (ii) any documents of a person carrying on the business of banking in so far as they relate to the company's affairs.
- (2) In any case to which this section applies, the District Court may make an order -
- (a) authorising any person named in the order to inspect the books or documents referred to in *subsection (1)(b)(i)* or *(ii)*, as the case may be, or any of them for the purpose of investigating and obtaining evidence of the offence; or
  - (b) in the case of books or documents referred to in *subsection (1)(b)(i)*, requiring the secretary of the company or any other officer of the company who is named in the order to produce the books or documents or any of them to a person named in the order at the place named in the order.
- (3) The District Court may make the order only on the application of -
- (a) the Director of Public Prosecutions;
  - (b) the Director; or
  - (c) a Superintendent of the Garda Síochána.

**Saving for privileged information.**

**78596.** (1) In this section—

“computer” has the same meaning as it has in *section 7788*;

“customer”, in relation to a person carrying on the business of banking, includes a person who has in the past availed himself or herself of one or more of the services of the person, as defined in section 149(12) of the Consumer Credit Act 1995.

“information” means information contained in a document, a computer or otherwise;

“privileged legal material” means information which, in the opinion of the court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

(2) Subject to *subsection (3)*, nothing in this Part shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material.

(3) The disclosure of information may be compelled, or possession of it taken, pursuant to the powers in this Part, notwithstanding that it is apprehended that the information is privileged legal material provided the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the court of the issue as to whether the information is privileged legal material.

(4) Without prejudice to *subsection (5)*, where, in the circumstances referred to in *subsection (3)*, information has been disclosed or taken possession of pursuant to the powers in this Part, the person—

(a) to whom such information has been so disclosed, or

(b) who has taken possession of it,

shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under *subsection (5)* in relation to the matter concerned) apply to the court for a determination as to whether the information is privileged

legal material and an application under this subsection shall be made within 7 days after the date of disclosure or the taking of possession.

(5) A person who, in the circumstances referred to in *subsection (3)*, is compelled to disclose information, or from whose possession information is taken, pursuant to the powers in this Part, may apply to the court for a determination as to whether the information is privileged legal material.

(6) Pending the making of a final determination of an application under *subsection (4)* or *(5)*, the court may give such interim or interlocutory directions as the court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—

(a) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the court,

(b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—

(i) examining the information, and

(ii) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the information is privileged legal material.

(7) An application under *subsection (4)*, *(5)* or *(6)* shall be by motion and may, if the court directs, be heard otherwise than in public.

(8) The Director shall not, under any of *sections 76879* to *77081*, require the production, by a person carrying on the business of banking, of a book or document relating to the affairs of a customer, or relating to the affairs of any other person, unless either-

- (a) the Director considers it necessary to do so for the purposes of investigating the affairs of the person carrying on the business of banking; or
- (b) the customer or other person is a person on whom a requirement has been imposed by virtue of that section.

(9) The publication, in pursuance of any provision of this Chapter, of any report, information, book or document shall be privileged.

**Assistance to company law authority.**

**78697.** (1) The Director may exercise the powers conferred on him or her by this Part for the purpose of assisting a company law authority if-

- (a) the Director has received a request from that company law authority for assistance in connection with inquiries being carried out by it or on its behalf; and
- (b) the Director is satisfied that such assistance is for the purpose of the discharge by the authority of its supervisory or regulatory functions.

(2) The Director may decline to accede to a request referred to in *subsection (1)* if -

- (a) the Director considers that it is not appropriate to give assistance; or
- (b) the company law authority making the request does not undertake to make such contribution to the costs attendant on the request as the Director considers appropriate.

- (3) In this section, “company law authority” means -
- (a) an authority outside the State that performs functions of a supervisory or regulatory nature in relation to bodies corporate or undertakings or their officers; or
  - (b) a person acting on behalf of such an authority.