

ARTHUR COX

**Compliance and Enforcement:
Part 14 of the Companies Bill**

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Part 14 – Compliance and Enforcement

- Consists of 9 Chapters,
- Contain 90 sections of law.

Chapter 1 – Preliminary

Chapter 1 contains 2 sections (*ss 798 to 799*):

- Section 798 states that if a company or an officer of it has failed to comply with a provision of the Act, the court may order the company or officer to remedy the default.
- Section 799 provides that the court may make an order restraining a company or an officer of it from removing his or her or the company's assets from the State, or reducing those assets below a specified amount.

Chapter 2 – Disclosure orders

Chapter 2 contains 19 sections (*ss 800 to 818*):

- Sections 800 to 805 provide that the court may make an order requiring a person to disclose details of persons interested (at any specified time) in the shares in or debentures of a company, or of persons who have acted on their behalf, and provides for related matters.
- Section 806 provides that a person is taken to have an interest where a family member or a body corporate controlled by them has such an interest.

Chapter 2 – Disclosure orders

- Sections 807 to 808 provide that where certain agreements between 2 or more persons include provision for the acquisition of interests in shares, each party to the agreement shall be taken to be interested in all shares in the company in which any other party is interested.
- Section 811 states that the court may grant an exemption from the requirements of a disclosure order.
- Sections 812 to 818 provide for various other matters in connection with disclosure orders.

Chapter 3 – Restrictions on directors of insolvent companies

Chapter 3 contains 19 sections (*ss 819 to 837*):

- Sections 819 to 821 provide that, on application of the Director of Corporate Enforcement, a liquidator or receiver, the court shall restrict a person who was a director of an insolvent company from acting as director or secretary of a company unless it is satisfied that the person acted honestly and responsibly in relation to the insolvent company, cooperated with the liquidator and it would not otherwise be just or equitable for the director to be restricted; and provide for related matters.

Chapter 3 – Restrictions on directors of insolvent companies

- Section 822 provides that if a liquidator is of the opinion that a restricted person is, for example, acting as director of a company, and the interests of the company may thereby be jeopardised, he shall inform the court.
- Section 823 allows the court grant relief from restriction.
- Section 824 requires the Registrar of Companies to keep a register of restricted persons.
- Section 825 applies the Chapter to receivers.

Chapter 3 – Restrictions on directors of insolvent companies

- Section 826 requires a restricted person to give notice to a company before accepting appointment or acting as director or secretary of it.
- Sections 827 to 832 provide that a company in which a restricted person is acting in breach of their restriction:
 - May not generally use the Summary Approval Procedure;
 - May not acquire certain non-cash assets from subscribers unless particular conditions are satisfied;and provides for related matters.

Chapter 3 – Restrictions on directors of insolvent companies

- Sections 833 to 834 impose specific provisions on the allotment of shares by a company that has a restricted person.
- Sections 835 to 836 allow the court to grant relief to a company that has a restricted person, and to vary the minimum capital requirement on such a company.
- Section 837 allows the court to find a person personally liable for the company's debts where it failed to meet the requirements of this Chapter.

Chapter 4 – Disqualification generally

Chapter 4 contains 12 sections (ss 838 to 849):

- Sections 838 and 849 are definitions sections.
- Section 840 provides for the automatic disqualification of a person from being appointed or acting as a director or other officer of a company, where the person is convicted on indictment of an offence in relation to a company, or an offence involving fraud or dishonesty.

Chapter 4 – Disqualification generally

- Sections 841 to 842 address where a director is disqualified under the laws of another state.
- Sections 843 to 848 provide that a court may make a disqualification order in certain circumstances, and provide for related matters.
- Section 849 provides that where a restricted person becomes a director, and that company is wound up insolvent, the liquidator shall report certain matters to the court, which may make a disqualification order.

Chapter 5 – Disqualification and restriction undertakings

Chapter 5 contains 6 sections (*ss 850 to 855*):

- Section 850 is a definitions section.
- Sections 851 to 852 provide that a person may provide an undertaking submitting himself to disqualification.
- Sections 853 to 854 provide that a person may provide an undertaking submitting himself to restriction.
- Section 855 provides for the Minister to make regulations.

Chapter 6 – Enforcement in relation to disqualification and restriction

Chapter 6 contains 10 sections (*ss 856 to 865*):

- Sections 856 to 858 set out offences relating to disqualification.
- Section 859 provides that a company may recover any consideration given by them to a person for an act or service performed by that person while restricted or disqualified.

Chapter 6 – Enforcement in relation to disqualification and restriction

- Sections 860 and 861 provide that where a restricted or disqualified person acts in breach, and the company is wound up insolvent, that person, or a person who acted under their directions, may be held personally liable for the debts of the company.
- Section 862 provides that the court may grant relief from liability.

Chapter 6 – Enforcement in relation to disqualification and restriction

- Section 863 provides that a director may be required to give certain information.
- Sections 864 and 865 provides that the Registrar shall be informed of orders made under this Part, and that the Registrar shall keep a register of particulars provided.

Chapter 7 – Provisions relating to offences generally

Chapter 7 contains 10 sections (*ss 866 to 875*):

- Sections 866 to 871 set out procedural matters relating to taking proceedings for offences under the Act.
- Section 872 sets out the penalties that shall apply to each of a Category 1 to 4 offences.
- Section 873 provides that a court may order that a convicted person remedy a breach of such an offence.

Chapter 7 – Provisions relating to offences generally

- Section 874 provides that the Director of Corporate Enforcement may deliver a notice requiring a person to remedy a default.
- Section 875 sets out special provisions where there is a default in the delivery of documents to the Registrar.

Chapter 8 – Additional general offences

Chapter 8 contains 4 sections (*ss 876 to 879*):

- Sections 876 to 879 provide for the following offences:
 - Improper use of 'limited' or 'teoranta';
 - Provision of false information;
 - Destruction or falsification of books or documents;
 - Fraudulently parting with, altering or making omission in books or documents.

Chapter 9 – Evidential matters

Chapter 9 contains 8 sections (*ss 880 to 887*):

- Sections 880 & 881 provides that a certificate signed by the Registrar certifying the existence of a body corporate, or a copy of the Act by which a corporation is incorporated, shall be evidence of the incorporation of that body for the purposes of proceedings in another state.
- Section 882 provides that answers given by a person to a court-appointed inspector (under Part 13) may be used in evidence against that person in civil but not criminal proceedings, and the inspector's report shall be admissible in such proceedings.

Chapter 9 – Evidential matters

- Sections 883 to 886 provide for procedural matters in relation to proceedings under the Act.
- Section 887 sets out the provisions whereby a statutory declaration may be made in a foreign place.

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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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