

ARTHUR COX

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

William Johnston  
Partner

## **Contents of Presentation**

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

## **Part 8 – Charges and debentures**

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

# Chapter 1 - Interpretation

## ***Section 429 – Appointment of receiver under powers contained in instrument: construction of such reference***

- This is an interpretation section.

## Chapter 2 – Appointment of Receivers

### *Section 430 – Notification that receiver has been appointed*

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

## Chapter 2 – Appointment of Receivers

### *Section 431 – Information to be given when Receiver is appointed in certain circumstances*

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

## Chapter 2 – Appointment of Receivers

### *Section 432 – Contents of Statement to be Submitted to Receiver*

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

## Chapter 2 – Appointment of Receivers

### *Section 433 – Consequences of Contravention of Section 431(1)(b) or 432*

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



## **Chapter 2 – Appointment of Receivers**

### ***Section 434 – Disqualification for Appointment as Receiver***

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

## **Chapter 2 – Appointment of Receivers**

### ***Section 435 – Resignation of Receiver***

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

## **Chapter 2 – Appointment of Receivers**

### ***Section 436 – Removal of Receiver***

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

## Chapter 2 – Appointment of Receivers

### *Section 437 – Notice to Registrar of Appointment of Receiver, and of Receiver Ceasing to Act*

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

## Chapter 3 – Powers and Duties of Receivers

### *Section 438 – Powers of Receiver*

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

## Chapter 3 – Powers and Duties of Receivers

### *Section 439 – Power of Receiver and Certain Others to Apply to Court, for Directions and Receiver's Liability on Contracts*

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

## Chapter 3 – Powers and Duties of Receivers

### *Section 440 – Duty of Receiver Selling Property to get Best Price Reasonably Obtainable, etc.*

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

## **Chapter 3 – Powers and Duties of Receivers**

### ***Section 441 – Preferential Payments when Receiver is Appointed Under Floating Charge***

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



## **Chapter 3 – Powers and Duties of Receivers**

### ***Section 442 – Delivery to Registrar of Accounts of Receivers***

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

## **Chapter 4 – Regulation of Receivers and Enforcement of their Duties**

### ***Section 443 – Enforcement of Duty of Receivers to make returns***

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

## **Chapter 4 – Regulation of Receivers and Enforcement of their Duties**

### ***Section 444 – Power of Court to Order the Return of Assets Improperly Transferred***

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

## Chapter 4 – Regulation of Receivers and Enforcement of their Duties

### *Section 445 – Power of Court to Fix Remuneration of Receiver*

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

## **Chapter 4 – Regulation of Receivers and Enforcement of their Duties**

### ***Section 446 – Court may end or limit Receivership on Application of Liquidator***

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

## **Chapter 4 – Regulation of Receivers and Enforcement of their Duties**

### ***Section 447 – Director of Corporate Enforcement may request production of Receiver's Books***

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

## Chapter 4 – Regulation of Receivers and Enforcement of their Duties

### *Section 448 – Prosecution of Offences Committed by Officers and Members of Company*

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

## **Chapter 4 – Regulation of Receivers and Enforcement of their Duties**

### ***Section 449 – Reporting to Director of Corporate Enforcement of misconduct by Receivers***

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



## For Further Information Contact

**William Johnston,  
Partner  
Arthur Cox**

**[william.johnston@arthurcox.com](mailto:william.johnston@arthurcox.com)**

**Direct line – 01 618 0560**

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

# Thank You.

## Dublin

---

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

## London

---

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

## Belfast

---

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

## New York

---

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

[www.arthurcox.com](http://www.arthurcox.com)