

- 424. Perpetual debentures.
- 425. Power to re-issue redeemed debentures.
- 426. Saving of rights of certain mortgagees in case of re-issued debentures.
- 427. Specific performance of contracts to subscribe for debentures.

CHAPTER 4

Prohibition on Registration of Certain Matters affecting Shareholders or Debentureholders

- 428. Registration against company of certain matters prohibited.

PART 8

RECEIVERS

CHAPTER 1

Interpretation

- 429. Appointment of receiver under powers contained in instrument: construction of such reference.

CHAPTER 2

Appointment of Receivers

- 430. Notification that receiver has been appointed.
- 431. Information to be given when receiver is appointed in certain circumstance.
- 432. Contents of statement to be submitted to receiver.
- 433. Consequences of contravention of *section 431(1)(b)* or *432*.
- 434. Disqualification for appointment as receiver.
- 435. Resignation of receiver.
- 436. Removal of receiver.
- 437. Notice to Registrar of appointment of receiver, and of receiver ceasing to act.

CHAPTER 3

Powers and Duties of Receivers

- 438. Powers of receiver.
- 439. Power of receiver and certain others to apply to court for directions and receiver's liability on contracts.
- 440. Duty of receiver selling property to get best price reasonably obtainable, etc.
- 441. Preferential payments when receiver is appointed under floating charge.
- 442. Delivery to Registrar of accounts of receivers.

CHAPTER 4

Regulation of Receivers and Enforcement of their Duties

- 443. Enforcement of duty of receivers to make returns.
- 444. Power of court to order the return of assets improperly transferred.
- 445. Power of court to fix remuneration of receiver.
- 446. Court may end or limit receivership on application of liquidator.
- 447. Director of Corporate Enforcement may request production of receiver's books.
- 448. Prosecution of offences committed by officers and members of company.
- 449. Reporting to Director of Corporate Enforcement of misconduct by receivers.

PART 9

REORGANISATIONS, ACQUISITIONS, MERGERS AND DIVISIONS

CHAPTER 1

Schemes of Arrangement

- 450. Interpretation (*Chapter 1*).
- 451. Scheme meetings — convening of such by directors and court's power to summon such meetings.
- 452. Court's power to stay proceedings or restrain further proceedings.
- 453. Information as to compromises or arrangements with members and creditors.
- 454. Circumstances in which compromise or arrangement becomes binding on creditors or members concerned.
- 455. Supplemental provisions in relation to *section 454*.
- 456. Provisions to facilitate reconstruction and amalgamation of companies.

CHAPTER 2

Acquisitions

- 457. Interpretation (*Chapter 2*).
- 458. Right to buy out shareholders dissenting from scheme or contract approved by majority and right of such shareholders to be bought out.
- 459. Additional requirement to be satisfied, in certain cases, for right to buy out to apply.
- 460. Supplementary provisions in relation to *sections 458* and *459* (including provision for applications to court).

Specific performance of contracts to subscribe for debentures.

427.—A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

CHAPTER 4

Prohibition on Registration of Certain Matters affecting Shareholders or Debentureholders 5

Registration against company of certain matters prohibited.

428.—(1) Subject to *subsection (3)*, the Registrar has, in relation to any company, no jurisdiction to accept receipt of, or to register in the register—

(a) an order of any authority (whether judicial or otherwise) affecting a shareholder or debentureholder of the company; or 10

(b) any notice of the making thereof.

(2) Any jurisdiction of an authority (whether judicial or otherwise) subsisting before the commencement of this section to make an order requiring that there be registered in the register, or that there be received by the Registrar— 15

(a) an order of that authority affecting a shareholder or debentureholder of a company; or

(b) a notice of the making of an order referred to in *paragraph (a)*, 20

shall, after that commencement, cease to be exercisable.

(3) Nothing in this section affects the jurisdiction of any authority (whether judicial or otherwise) under *Chapter 3 of Part 13* or *Chapter 2 of Part 14*. 25

PART 8

RECEIVERS

CHAPTER 1

Interpretation

Appointment of receiver under powers contained in instrument: construction of such reference.

429.—In this Part any reference to the appointment of a receiver under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument. 30

CHAPTER 2

Appointment of Receivers 35

Notification that receiver has been appointed.

430.—(1) Where a receiver of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed. 40

(2) Where—

(a) a receiver of the property of a company has been appointed; and

5 (b) a winding up of the company is taking place (whether that winding up has commenced before or after that appointment),

every invoice, order for goods or business letter issued by or on behalf of the company or the receiver, being a document on or in which the name of the company appears, shall, in addition to the statement referred to in *subsection (1)*, contain a statement that the company is being wound up.

(3) Where a receiver of the property of a company has been appointed, then—

(a) any website of the company; and

15 (b) any electronic mail sent to a third party by, or on behalf of, the company,

shall contain a statement that a receiver has been appointed (and such a statement on a website shall be in a prominent and easily accessible place on it).

20 (4) Where—

(a) a receiver of the property of a company has been appointed; and

25 (b) a winding up of the company is taking place (whether that winding up has commenced before or after that appointment),

then—

(i) any website of the company; and

(ii) any electronic mail sent to a third party by, or on behalf of, the company,

30 shall, in addition to the statement referred to in *subsection (3)*, contain a statement that the company is being wound up (and such a statement on a website shall be in a prominent and easily accessible place on it).

35 (5) In *subsections (3) and (4)*, “third party” means a person other than—

(a) an officer or employee of the company concerned; or

(b) a holding company or subsidiary of the company or an officer or employee of that holding company or subsidiary.

40 (6) If default is made in complying with *subsection (1) or (2)*—

(a) the company and any officer of the company who is in default; and

- (b) any of the following persons who knowingly and intentionally authorises or permits the default, namely, any liquidator of the company and any receiver,

shall be guilty of a category 4 offence.

(7) If default is made in complying with the requirement under *subsection (3)* or *(4)* concerning the company's website, the company concerned and any officer of it who is in default shall be guilty of a category 4 offence. 5

(8) If default is made by a company, or any person acting on its behalf, in complying with the requirement under *subsection (3)* or *(4)* concerning electronic mail, then— 10

- (a) in every case, the company and any officer of it who is in default; and
- (b) where the default is made by a person acting on the company's behalf, that person, 15

shall be guilty of a category 4 offence.

Information to be given when receiver is appointed in certain circumstance.

431.—(1) Where a receiver of the whole, or substantially the whole, of the property of a company (referred to subsequently in this section and *sections 432* and *433* as the “receiver”) is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this section and *section 432*— 20

- (a) the receiver shall forthwith send notice to the company of his or her appointment;
- (b) there shall, within 14 days after the date of receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with *section 432* a statement in the prescribed form as to the affairs of the company; and 25
- (c) the receiver shall, within 2 months after the date of receipt of that statement, send to— 30
 - (i) the Registrar;
 - (ii) the court;
 - (iii) the company;
 - (iv) any trustees for the debenture holders on whose behalf he or she was appointed; and 35
 - (v) so far as he or she is aware of their addresses, all such debenture holders,

a copy of the statement and of any comments he or she sees fit to make on it. 40

(2) In *subsection (3)* “initial period of 6 months”, in relation to the receiver, means the period of 6 months falling after the date of his or her appointment.

(3) The receiver shall send to the Registrar—

(a) within 30 days after the expiration of—

(i) the initial period of 6 months; and

(ii) each subsequent period of 6 months;

and

5 (b) within 30 days after the date on which he or she ceases to act as receiver of the property of the company,

an abstract in the prescribed form showing—

10 (i) the assets of the company of which he or she has taken possession since his or her appointment, their estimated value and the proceeds of sale of any such assets since his or her appointment;

15 (ii) his or her receipts and payments during that period of 6 months or, where he or she ceases to act as mentioned above, during the period from the end of the period to which the last preceding abstract related up to the date of his or her so ceasing; and

(iii) the aggregate amounts of his or her receipts and of his or her payments during all preceding periods since his or her appointment.

20 (4) Where a receiver ceases to act as receiver of the property of the company, the abstract under *subsection (3)* shall be accompanied by a statement from the receiver of his or her opinion as to whether or not the company is solvent and the Registrar shall, on receiving the statement, forward a copy of it to the Director of Corporate
25 Enforcement.

(5) Where a receiver is appointed under the powers contained in any instrument, this section shall have effect with the omission of the references to the court in *subsection (1)*, and in any other case, references to the court shall be taken as referring to the court by
30 which the receiver was appointed.

(6) *Subsection (1)* shall not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver dying or ceasing to act, except that, where that subsection applies to a receiver who dies or ceases to act before it has been fully complied
35 with, the references in *paragraphs (b) and (c)* of it to the receiver shall (subject to *subsection (7)*) include references to his or her successor and to any continuing receiver. Nothing in this subsection shall be taken as limiting the meaning of the “receiver” where used in or in relation to *subsection (3)*.

40 (7) This section and *section 432*, where the company is being wound up, shall apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

45 (8) Nothing in *subsection (3)* shall be taken to prejudice the duty of the receiver to render proper accounts of his or her receipts and payments to the persons to whom, and at the times at which, he or she may be required to do so apart from that subsection.

(9) Where the Registrar becomes aware of the appointment of a receiver referred to in this section, he or she shall forthwith inform the Director of Corporate Enforcement of the appointment.

(10) If the receiver makes default in complying with this section, he or she shall be guilty of a category 4 offence. 5

Contents of statement to be submitted to receiver.

432.—(1) The statement as to the affairs of a company required by *section 431* (the “statement”) to be submitted to the receiver (or his or her successor) shall show as at the date of the receiver’s appointment—

- (a) particulars of the company’s assets, debts and liabilities; 10
- (b) the names and residences of its creditors;
- (c) the securities held by those creditors respectively;
- (d) the dates when those securities were respectively given; and
- (e) such further or other information as may be prescribed. 15

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are, at the date of the receiver’s appointment, the directors and by the person who is at that date the secretary of the company, or by such of the persons referred to subsequently in this subsection as the receiver (or his or her successor) may require to submit and verify the statement, that is, persons— 20

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the date of the receiver’s appointment; 25
- (c) who are in the employment of the company or have been in the employment of the company within that year, and are, in the opinion of the receiver, capable of giving the information required; 30
- (d) who are or have been within that year, officers of or in the employment of a company which is, or within that year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his or her successor) out of his or her receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his or her successor) may consider reasonable, subject to an appeal to the court. 40

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution, for references to an affidavit, of references to a statutory declaration; and in any other case, references to the court shall be taken to refer to the court by which the receiver was appointed. 45

(5) If any person to whom *subsection (2)* applies makes default in complying with the requirements of this section, he or she shall,

unless he or she can prove to the satisfaction of the court that it was not possible for him or her to comply with the requirements of this section, be guilty of a category 3 offence.

5 (6) References in this section to the receiver's successor include references to a continuing receiver.

10 **433.**—Where, in contravention of *sections 431(1)(b)* and *432*, a statement of affairs is not submitted to the receiver as required by those provisions, the court may, on the application of the receiver or any creditor of the company, and notwithstanding *section 432(5)*, make whatever order it thinks fit, including an order compelling compliance with *sections 431* and *432*.

Consequences of contravention of *section 431(1)(b)* or *432*.

434.—(1) None of the following persons shall be qualified for appointment as receiver of the property of a company—

Disqualification for appointment as receiver.

- (a) an undischarged bankrupt;
- 15 (b) a person who is, or who has, within the period of 12 months before the date of commencement of the receivership been, an officer or employee of the company;
- (c) a parent, spouse, civil partner, brother, sister or child of an officer of the company;
- 20 (d) a person who is a partner of, or in the employment of, an officer or employee of the company;
- (e) a person who is not qualified by virtue of this subsection for appointment as receiver of the property of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company;
- 25 (f) a body corporate.

(2) References in *subsection (1)* to—

- 30 (a) a child of an officer shall be deemed to include a child of the officer's civil partner who is ordinarily resident with the officer and the civil partner;
- (b) an officer or employee of the company include a statutory auditor.

35 (3) If a receiver of the property of a company becomes disqualified by virtue of this section, he or she shall thereupon vacate his or her office and give notice in writing within 14 days after the date of vacation to—

- (a) the company;
- 40 (b) the Registrar;
- (c) (i) the debenture-holder, if the receiver was appointed by a debenture-holder, or

(ii) the court, if the receiver was appointed by the court,
that he or she has vacated it by reason of such disqualification.

(4) *Subsection (3)* is without prejudice to *sections 431(3), 437*
and *442*.

(5) Nothing in this section shall require a receiver appointed 5
before 1 August 1991 to vacate the office to which he or she was
so appointed.

(6) Any person who acts as a receiver when disqualified by this
section from so doing or who fails to comply with *subsection (3)*, if
that subsection applies to him or her, shall be guilty of a category 10
2 offence.

Resignation of
receiver.

435.—(1) A receiver of the property of a company appointed
under the powers contained in any instrument may resign, provided
he or she has given at least 30 days' prior notice of the date on which
the resignation will take effect to— 15

(a) the holders of charges (whether fixed or floating) over all
or any part of the property of the company; and

(b) the company or its liquidator.

(2) A receiver appointed by the court may resign only with the
authority of the court and on such terms and conditions, if any, as 20
may be specified by the court.

(3) If a person makes default in complying with *subsection (1)* or
(2), he or she shall be guilty of a category 4 offence.

Removal of
receiver.

436.—(1) The court may, on cause shown, remove a receiver of
the property of a company and appoint another receiver. 25

(2) Notice of proceedings in which such removal is sought shall
be served on the receiver and on the person who appointed him or
her not less than 7 days before the date of the hearing of such pro-
ceedings and, in any such proceedings, the receiver and the person
who appointed him or her may appear and be heard. 30

Notice to Registrar
of appointment of
receiver, and of
receiver ceasing to
act.

437.—(1) If any person obtains an order for the appointment of a
receiver of the property of a company or appoints such a receiver
under any powers contained in any instrument, he or she—

(a) shall cause to be published in the CRO Gazette; and

(b) shall deliver to the Registrar, 35

within 7 days after the date of the order or of the appointment, a
notice in the prescribed form.

(2) When any person appointed receiver of the property of a com-
pany ceases to act as such receiver, he or she shall, on so ceasing,
deliver to the Registrar a notice in the prescribed form. 40

(3) If a person makes default in complying with *subsection (1)* or
(2), he or she shall be guilty of a category 4 offence.

Powers and Duties of Receivers

5 **438.**—(1) Subject to the provisions of this section, a receiver of Powers of receiver.
the property of a company has power to do, in the State and else-
where, all things necessary or convenient to be done for or in connec-
tion with, or as incidental to, the attainment of the objectives for
which the receiver was appointed.

10 (2) Without limiting the generality of *subsection (1)* but subject to
subsection (4), a receiver of the property of a company has (in
addition to any powers conferred by the order or instrument referred
to in *subsection (4)* or by any other law) power to do one or more
of the following things for the purpose of attaining the objectives for
which he or she was appointed.

(3) Those things are:

15 (a) to enter into possession and take control of property of
the company in accordance with the terms of the order
or instrument referred to in *subsection (4)*;

(b) to lease, let on hire or dispose of property of the company;

20 (c) to grant options over property of the company on such
conditions as the receiver thinks fit;

(d) to borrow money on the security of property of the
company;

(e) to insure property of the company;

(f) to repair, renew or enlarge property of the company;

25 (g) to convert property of the company into money;

(h) to carry on any business of the company;

(i) to take on lease or on hire, or to acquire, any property
necessary or convenient in connection with the carrying
on of a business of the company;

30 (j) to execute any document, bring or defend any proceedings
or do any other act or thing in the name of and on behalf
of the company;

(k) to draw, accept, make and endorse a bill of exchange or
promissory note;

35 (l) to use a seal of the company;

(m) to engage or discharge employees on behalf of the
company;

(n) to appoint a solicitor, accountant or other professionally
qualified person to assist the receiver;

- (o) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person;
- (p) where a debt or liability is owed to the company, to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement; 5
- (q) if the receiver was appointed under an instrument that created a charge on uncalled share capital of the company— 10
 - (i) to make a call in the name of the company for the payment of money unpaid on the company's shares; or
 - (ii) on giving a proper indemnity to a liquidator of the company, to make a call in the liquidator's name for the payment of money unpaid on the company's shares; 15
- (r) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise; 20
- (s) to make or defend an application for the winding up of the company;
- (t) to refer to arbitration or mediation, any question affecting the company.

(4) *Subsections (1) and (2)* are subject to any provision of the order of the court by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way. 25

(5) The conferral on a receiver, by this section, of powers in relation to property of a company does not affect any rights in relation to that property of any other person other than the company. 30

(6) In *subsections (3) and (5)* a reference, in relation to a receiver, to property of a company is a reference to the property of the company in relation to which the receiver was appointed; this subsection is in addition to *section 2(9)* providing for construction of references to a receiver of property of a company. 35

Power of receiver and certain others to apply to court for directions and receiver's liability on contracts.

439.—(1) Where a receiver of the property of a company is appointed under the powers contained in any instrument, any of the following persons may apply to the court for directions in relation to any matter in connection with the performance or otherwise, by the receiver, of his or her functions, that is to say— 40

- (a) (i) the receiver;
- (ii) an officer of the company;
- (iii) a member of the company; 45

(iv) employees of the company comprising at least half in number of the persons employed in a permanent capacity by the company;

(v) a creditor of the company;

5 and

(b) (i) a liquidator;

(ii) a contributory,

and, on any such application, the court may give such directions, or make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

15 (2) An application to the court under *subsection (1)*, except an application under that subsection by the receiver, shall be supported by such evidence that the applicant is being unfairly prejudiced by any actual or proposed act or omission of the receiver as the court may require.

(3) For the purposes of *subsection (1)*, “creditor” means one or more creditors to whom the company is indebted by more, in aggregate, than €13,000.

20 (4) A receiver of the property of a company shall be personally liable on any contract entered into by him or her in the performance of his or her functions (whether such contract is entered into by the receiver in the name of such company or in his or her own name as receiver or otherwise) unless the contract provides that he or she is not to be personally liable on such contract.

25 (5) In those circumstances, the receiver shall be entitled in respect of that liability to indemnity out of the assets of the company; but nothing in *subsection (4)* shall be taken as—

(a) limiting any right to indemnity which the receiver would have apart from that subsection; or

30 (b) limiting the receiver’s liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

35 (6) *Subsection (7)* applies where a receiver of the property of a company has been appointed or purported to be appointed and it is subsequently discovered that the charge or purported charge in respect of which he or she was so appointed or purported to be appointed was not effective as a charge on such property or on some part of such property.

40 (7) Where this subsection applies, the court may, if it thinks fit, on the application of the receiver referred to in *subsection (6)*, order that he or she be relieved wholly, or to such extent as the court shall think fit, from personal liability in respect of anything done or omitted by him or her in relation to any property purporting to be comprised in the charge by virtue of which he or she was appointed or purported to be appointed which, if such property had been effectively included in such charge or purported charge, would have been properly done or omitted by him or her and he or she shall be relieved from personal liability accordingly.

(8) In the event of such an order being made, the person by whom such receiver was appointed or purported to be appointed shall be personally liable for everything for which, but for such order, such receiver would have been liable.

Duty of receiver selling property to get best price reasonably obtainable, etc.

440.—(1) A receiver of the property of a company shall, in selling property of the company, exercise all reasonable care to obtain the best price reasonably obtainable for the property as at the time of sale. 5

(2) Notwithstanding the provisions of any instrument and, in the case of *paragraph (b), section 439(4) and (5)*— 10

(a) it shall not be a defence to any action or proceeding brought against a receiver in respect of a breach of his or her duty under *subsection (1)* that the receiver was acting as the agent of the company or under a power of attorney given by the company; and 15

(b) a receiver shall not be entitled to be compensated or indemnified by the company for any liability he or she may incur as a result of a breach of his or her duty under that subsection.

(3) A receiver shall not sell by private contract a non-cash asset of the requisite value to a person who is, or who, within 3 years prior to the date of appointment of the receiver, has been, an officer of the company unless the receiver has given at least 14 days' notice of his or her intention to do so to all creditors of the company who are known to the receiver or who have been intimated to the receiver. 20 25

(4) In this section—

“non-cash asset” and “requisite value” have the meanings given to them by *section 239*;

“officer” includes a person connected (within the meaning of *section 221*) with— 30

(a) a director of the company;

(b) a shadow director of it; or

(c) a *de facto* director of it.

Preferential payments when receiver is appointed under floating charge.

441.—(1) Where either—

(a) a receiver of the property of a company is appointed on behalf of the holders of any debentures of the company secured by a floating charge; or 35

(b) possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, 40

then, if the company is not at the time in the course of being wound up, the debts which in every winding up are, under the provisions of *Part II* relating to preferential payments, to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as mentioned above 45

in priority to any claim for principal or interest in respect of the debentures.

5 (2) In the application of the foregoing provisions, *section 622(2)(c)* shall be read as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as mentioned above.

(3) For the purposes of this section, the periods of time mentioned in the foregoing provisions of *Part 11* shall be reckoned as beginning after the date of the appointment of the receiver or of possession being taken as mentioned above, as the case may be.

15 (4) Any payments made under this section shall be recouped so far as may be out of the assets of the company available for payment of general creditors.

20 **442.**—(1) In this section “initial period of 6 months”, in relation to a receiver, means the period of 6 months falling after the date of his or her appointment.

Delivery to Registrar of accounts of receivers.

(2) Except where *section 431(3)* applies, a receiver of the property of a company shall send to the Registrar—

(a) within 30 days after the expiration of—

(i) the initial period of 6 months; and

25 (ii) each subsequent period of 6 months;

and

(b) within 30 days after the date on which he or she ceases to act as receiver of the property of the company,

an abstract in the prescribed form showing—

30 (i) the assets of the company of which he or she has taken possession since his or her appointment, their estimated value and the proceeds of sale of any such assets since his or her appointment;

35 (ii) his or her receipts and payments during that period of 6 months or, where he or she ceases to act as mentioned above, during the period from the end of the period to which the last preceding abstract related up to the date of his or her so ceasing; and

40 (iii) the aggregate amounts of his or her receipts and of his or her payments during all preceding periods since his or her appointment.

(3) A receiver who makes default in complying with *subsection (2)* shall be guilty of a category 4 offence.

Regulation of Receivers and Enforcement of their Duties

Enforcement of duty of receivers to make returns.

443.—(1) *Subsection (2)* applies if a receiver of the property of a company—

- (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the date of service on him or her of a notice requiring him or her to do so; or
- (b) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his or her receipts and payments and to vouch those receipts and payments and to pay over to the liquidator the amount properly payable to him or her.

(2) Where this subsection applies, the court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.

(3) In the case of any such default as is mentioned in *subsection (1)(a)*, any member or creditor of the company or the Registrar may make an application for the purposes of this section.

(4) In the case of any such default as is mentioned in *subsection (1)(b)*, the liquidator of the company is alone entitled to make an application for the purposes of this section.

(5) In either of the foregoing cases, the order under this section may provide that all costs of and incidental to the application shall be borne by the receiver.

(6) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in *subsection (1)*.

Power of court to order the return of assets improperly transferred.

444.—(1) Where a receiver of the property of a company is appointed and, on the application of the receiver or any creditor or member of the company, it can be shown to the satisfaction of the court that—

- (a) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer, mortgage, security, loan, or in any way whatsoever whether by act or omission, direct or indirect; and
- (b) the effect of such disposal was to perpetrate a fraud on the company, its creditors or members,

the court may, if it deems it just and equitable to do so, make the following order.

(2) That order of the court is one requiring any person who appears to have the use, control or possession of such property or

the proceeds of the sale or development of it to deliver it or pay a sum in respect of it to the receiver on such terms or conditions as the court sees fit.

5 (3) *Subsection (1)* shall not apply to any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company to which *section 605* applies.

10 (4) In deciding whether it is just and equitable to make an order under this section, the court shall have regard to the rights of persons who have *bona fide* and for value acquired an interest in the property the subject of the application.

15 **445.**—(1) Where a person has, under the powers contained in any instrument, been appointed as receiver of the property of a company the court may, on an application made by the liquidator of a company or by any creditor or member of the company, make the following order. Power of court to fix remuneration of receiver.

20 (2) That order of the court is one fixing the amount to be paid by way of remuneration to that receiver and such an order may be made notwithstanding that his or her remuneration has been fixed by or under that instrument.

(3) Subject to *subsection (4)*, the power of the court under *subsection (1)* shall, where no previous order has been made in relation to the matter concerned under that subsection—

25 (a) extend to fixing the remuneration for any period before the making of the order or the application for it;

(b) be exercisable notwithstanding that the receiver has died or ceased to act before the making of the order or the application for it; and

30 (c) if the receiver has been paid or has retained for his or her remuneration for any period before the making of the order any amount in excess of that fixed by the court for that period, extend to requiring him or her or his or her personal representatives to account for the excess or such part of it as may be specified in the order.

35 (4) The power conferred by *subsection (3)(c)* shall not be exercised in relation to any period before the making of the application for the order unless, in the opinion of the court, there are special circumstances making it proper for the power to be so exercised.

40 (5) The court may from time to time, on an application made by the liquidator or by any creditor or member of the company or by the receiver, vary or amend an order made under *subsection (1)*.

(6) Nothing in this section shall affect a receiver's right to indemnity out of the assets of the company provided by *section 439*.

45 **446.**—(1) On the application of the liquidator of a company that is being wound up (other than by means of a members' voluntary winding up) and in respect of the property of which a receiver has been appointed (whether before or after the commencement of the winding up), the court may make the following order. Court may end or limit receivership on application of liquidator.

(2) That order of the court is one—

(a) that the receiver shall cease to act as such from a date specified by the court, and prohibiting the appointment of any other receiver; or

(b) that the receiver shall, from a date specified by the court, act as such only in respect of certain assets specified by the court. 5

(3) An order under *subsection (1)* may be made on such terms and conditions as the court thinks fit.

(4) The court may from time to time, on an application made either by the liquidator or by the receiver, discharge or amend an order made under *subsection (1)*. 10

(5) A copy of an application made under this section shall be served on the receiver and on the person who appointed him or her not less than 7 days before the date of the hearing of the application, and the receiver and any such person may appear before and be heard by the court in respect of the application. 15

(6) Except as provided in *subsection (2)*, no order made under this section shall affect any security or charge over the undertaking or property of the company. 20

Director of
Corporate
Enforcement may
request production
of receiver's books.

447.—(1) The Director of Corporate Enforcement may, where he or she considers it necessary or appropriate, make the following request of the receiver of the property of a company or companies (specifying the reason why the request is being made).

(2) That request is that the receiver produce to the Director the receiver's books for examination, either in regard to a particular receivership or to all receiverships undertaken by the receiver. 25

(3) The receiver of whom a request under *subsection (1)* is made shall—

(a) furnish the books to the Director of Corporate Enforcement; 30

(b) answer any questions concerning the content of the books and the conduct of the particular receivership or receiverships; and

(c) give to the Director of Corporate Enforcement all assistance in the matter as the receiver is reasonably able to give. 35

(4) A request under *subsection (1)* may not be made in respect of books relating to a receivership that has concluded more than 6 years prior to the date of the request. 40

(5) If a receiver fails to comply with a request under *subsection (1)* or do any of the things referred to in *subsection (3)(b)* and *(c)*, he or she shall be guilty of a category 3 offence.

Prosecution of
offences committed
by officers and
members of
company.

448.—(1) If it appears to the receiver of the property of a company, in the course of the receivership, that any past or present officer, or any member, of the company has been guilty of any 45

offence in relation to the company, the receiver shall forthwith report the matter to the Director of Public Prosecutions.

(2) Where the receiver reports a matter under *subsection (1)* to the Director of Public Prosecutions, the receiver shall—

5 (a) provide to the Director of Public Prosecutions such information, relating to the matter in question, as he or she may require; and

10 (b) give to him or her such access to, and facilities for, inspecting and taking copies of such documents, being documents in the possession or under the control of the receiver and relating to the matter in question, as he or she may require.

(3) Where a foregoing report is made by the receiver, the receiver shall also report the matter to the Director of Corporate
15 Enforcement.

(4) Where a matter is reported by the receiver under *subsection (3)* to the Director of Corporate Enforcement, the receiver shall—

20 (a) provide to the Director of Corporate Enforcement such information, relating to the matter in question, as he or she may require; and

25 (b) give to him or her such access to, and facilities for, inspecting and taking copies of such documents, being documents in the possession or under the control of the receiver and relating to the matter in question, as he or she may require.

(5) If, where any matter is reported under *subsection (1)* or *(3)* to—

(a) the Director of Public Prosecutions; or

(b) the Director of Corporate Enforcement,

30 the Director of Public Prosecutions or, as the case may be, the Director of Corporate Enforcement considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of each of the following to give all
35 assistance in connection with the prosecution which he or she is reasonably able to give.

(6) The persons referred to in *subsection (5)* are the receiver of the company and—

(a) every officer (past or present) of the company; and

(b) every agent (past or present) of the company,

40 other than the defendant in the proceedings.

(7) For the purposes of *subsection (6)*, “agent”, in relation to a company, includes—

(a) the bankers and solicitors of the company; and

45 (b) any persons employed by the company 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.

(8) If any person fails or neglects to give assistance in the manner required by *subsection (5)*, the court may, on the application of the Director of Public Prosecutions or, as the case may be, the Director of Corporate Enforcement, direct that person to comply with the requirements of that subsection. 5

(9) Where any such application is made in relation to a receiver, the court may, unless it appears that the failure or neglect to comply was due to the receiver not having in his or her hands sufficient assets of the company to enable him or her so to do, direct that the costs of the application shall be borne by the receiver personally. 10

Reporting to
Director of
Corporate
Enforcement of
misconduct by
receivers.

449.—(1) Where a disciplinary committee or tribunal (however called) of a prescribed professional body— 15

(a) finds that a member of that body who is conducting or has conducted a receivership has not maintained appropriate records in relation to that activity; or

(b) has reasonable grounds for believing that such a member has committed a category 1 or 2 offence during the course of conducting a receivership, 20

the professional body shall report the matter, giving details of the finding or, as the case may be, of the alleged offence, to the Director of Corporate Enforcement forthwith.

(2) If a professional body fails to comply with this section, it, and any officer of the body to whom the failure is attributable, shall be guilty of a category 3 offence. 25

PART 9

REORGANISATIONS, ACQUISITIONS, MERGERS AND DIVISIONS

CHAPTER 1 30

Schemes of Arrangement

Interpretation
(Chapter 1).

450.—(1) In this Chapter—

“arrangement”, in relation to a company, includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods; 35

“debenture trustees”, in relation to a company, means the trustees of a deed securing the issue of debentures by the company;

“new company” shall be read in accordance with *section 456(1)(b)(ii)*; 40

“old company” shall be read in accordance with *section 456(1)(b)(ii)*;

“scheme circular” shall be read in accordance with *section 453(1)(a)*;