
COMPANIES BILL 2012

Unofficial version

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PART 14
COMPLIANCE AND ENFORCEMENT

Chapter 1

Compliance and protective orders

Court may order compliance by company or officer.

[797]. (1) This section applies if a company or an officer of a company -

- (a) has failed to comply with a provision of this Act; and
- (b) the company or officer has failed to remedy the default within 14 days (or such longer period as may be specified in the notice) after the date of service by any person referred to in *subsection (3)* on the company or officer of a notice requiring the company or officer to remedy the default.

(2) In any case to which this section applies, the court, on the application of a person specified in *subsection (3)*, may order the company or officer in default to remedy the default within such time as the court specifies.

(3) The court may make the order only on the application of one of the following:

- (a) any member of the company;
- (b) any creditor of the company;
- (c) the Director; or
- (d) the Registrar.

(4) In making an order under *subsection (2)*, the court may order that the company or the officers responsible for the default pay all costs of and incidental to the application.

(5) Subject to *subsection (6)*, no order may be made under this section in relation to a default that, in the opinion of the court, constitutes a wrong done to the company an action in respect of which, under the general law, is maintainable by the company alone, as distinct from another by derivative proceedings.

(6) *Subsection (5)* does not apply if the facts constituting the default in question amount, in the opinion of the court, to the commission of an offence.

(7) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties (including restriction under *Chapter 3* of this Part and disqualification under *Chapter 4* of this Part) on a company or its officers in respect of the default in question.

(8) In this section, “officer” means director, shadow director, promoter, receiver, liquidator, statutory auditor or secretary.

Court may restrain directors and others from removing assets.

[798]. (1) The court may make an order restraining a director or other officer of a company, or a company, from -

- (a) removing his or her or the company’s assets from the State; or
- (b) reducing his or her or the company’s assets within or outside the State below an amount specified in the order.

- (2) The court may make the order if it is satisfied that -
- (a) the applicant has a qualifying claim; and
 - (b) there are grounds for believing that the director or officer, or the company, may remove or dispose of his or her assets or the assets of the company with a view to evading his or her obligations or those of the company and frustrating an order of the court.
- (3) The court may make the order only on the application of -
- (a) the company;
 - (b) a director, member, liquidator, receiver or creditor of the company; or
 - (c) the Director.
- (4) In *subsection (2)(a)*, “qualifying claim” means a claim that-
- (a) is a substantive civil cause of action or right to seek a declaration of personal liability or to claim damages against the director, officer or company; and
 - (b) arises -
 - (i) under this Act; or
 - (ii) under the constitution of the company; or
 - (iii) from the holding of an office of the company.

Chapter 2

Disclosure orders

Interpretation (Chapter 2).

[799]. (1) In this Chapter -

“disclosure order” means an order under *section [800]*;

“share acquisition agreement” has the meaning given to it by *section [808]*.

(2) Any reference in this Chapter 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.

Court may make disclosure order.

[800]. (1) On the application of -

- (a) any person who has a financial interest in a company; or
- (b) the Director,

the court may make an order specified in *section [801]* in respect of all or any of the shares in or debentures of the company.

(2) An application under this section shall be supported by such evidence as the court may require.

(3) The court may make a disclosure order only if the court considers that -

- (a) it is just and equitable to do so; and
- (b) in the case of an application made other than by the Director, the financial interest of the applicant is or will be prejudiced by the non-disclosure of any interest in the shares in or debentures of the company.

(4) The court may, before hearing an application under this section, require the applicant to give security for the payment of the costs of hearing the application or any consequential proceedings.

(5) If an application is made under this section by the Director then there are not available to the Director –

(a) the powers under *section [764](1)* as regards appointing one or more competent inspectors to investigate and report on any matter in so far as such investigation and reporting would relate to the same shares or debentures of the company in question; or

(b) the powers under *section [767]* to require information as to persons interested in shares or debentures, being the same shares or debentures of the company in question,

as the application under this section relates to.

(6) *Section [809]* confers additional powers on the court for the purposes of ensuring that disclosure of the information sought, in cases of share acquisition agreements, is achieved.

(7) For the purposes of this section, “financial interest” includes any interest as member, contributory, creditor, employee, co-adventurer, examiner, lessor, lessee, licensor, licensee, liquidator or receiver either in relation to the company in respect of whose shares or debentures the disclosure order is sought or a related company.

Types of disclosure order.

[801]. The court may make an order under *section [800](1)* -

(a) requiring any person whom the court believes has or is able to obtain all or any of the following information to disclose to the court so much of that information that the person has or is able to obtain:

(i) the names and addresses of persons currently interested, or interested at any time during a period specified in the order, in the shares in or debentures of a company; and

(ii) the name and address of any person who acts or has acted on behalf of any of those persons in relation to the shares or debentures;

(b) requiring any person whom the court believes to be currently interested, or to have been interested at any time during a period specified in the order, in the shares in or debentures of a company -

(i) to confirm or deny that that is the case; and

(ii) if confirming, to disclose such further information as the court may require; or

(c) requiring a person interested in the shares in or debentures of a company specified in the order to disclose in respect of those shares or debentures to the court -

(i) the information required in *paragraph (a)(i) to (ii)*; and

(ii) such further information as the court may require.

Procedure on application for disclosure order.

[802]. (1) A person intending to apply for a disclosure order shall give not less than 10 days' notice of the intention to apply to -

- (a) the company in respect of whose shares or debentures the order is sought; and
- (b) the person to whom the order is to be directed.

(2) If, on that application, it is intended also to apply for an order under *section [809]*, not less than 10 days' notice of the intention to apply for such an order shall be given by the applicant to the person to whom that order is to be directed.

(3) Without prejudice to *subsection (2)*, the applicant shall also serve on any person specified by the court such notice of the application as the court may direct.

(4) On the hearing of the application every person notified under *subsection (1), (2) or (3)* may appear and adduce evidence.

Scope of disclosure order.

[803]. (1) A disclosure order may require the person to whom it is addressed -

- (a) to give particulars of that person's own past or present interest in shares comprised in the share capital of the company or in debentures of the company held by that person at any time during the period specified in the order;
- (b) where that person's interest is a present interest and any other interest in the shares or debentures subsists, to give such particulars of that other interest that are -

- (i) required by the order; and

- (ii) within that person's knowledge;

- (c) where another interest in the shares or debentures subsisted at any time during the period specified in the order when the person's own interest subsisted, to give such particulars of that other interest that are -

- (i) required by the order; and

- (ii) within that person's knowledge;

- (d) where that person's interest is a past interest, to give those particulars, that are within his or her knowledge, of the person who held that interest immediately after him or her.

(2) A disclosure order shall specify the information to be given to the court under the order in respect of any person, shares or debentures to which it refers and such information shall be given in writing.

(3) *Section [807]* supplements *subsection (2)* as regards particular information to be given in cases of share acquisition agreements.

(4) For the purposes of this section, and without prejudice to *sections [804] to [808]*, an interest in shares in or debentures of a company includes a present or past right, or entitlement to acquire a right, to subscribe for shares or debentures if, on the basis that those shares or debentures would be, or (as the case may be) would have been, comprised in the share capital of the company or issued by it, as the case may be.

Interests in shares and debentures for purposes of *section [803]*: general.

[804]. (1) Without prejudice to the subsequent provisions of this Chapter, this section applies to the construction, for the purposes of

–

(a) *section [803]*; and

(b) the subsequent sections of this Chapter as they relate to any spouse, minor child, body corporate or a party to an agreement,

(in this section referred to, respectively, as the “relevant purposes” and the “relevant sections”) of references to –

(i) a person’s being interested in shares or debentures; or

(ii) an interest in shares or debentures.

(2) For the relevant purposes, a reference to an interest in shares or debentures in the relevant sections is to be read as including an interest of any kind whatsoever in the shares or debentures.

(3) Accordingly there are to be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.

(4) Where property is held on trust and an interest in shares or debentures is comprised in the property, a beneficiary of the trust who, apart from this subsection, does not have an interest in the shares or debentures, as appropriate, is to be taken, for the relevant purposes, as having such an interest; but this subsection is without prejudice to the following provisions of this section.

(5) A person is taken, for the relevant purposes, to have an interest in shares or debentures if—

(a) the person enters into a contract for their purchase by him or her (whether for cash or other consideration); or

(b) in the case of shares, not being the registered holder of the shares, the person is entitled to exercise any right conferred by the holding of the shares or is entitled to control the exercise of any such right.

(6) For the purposes of *subsection (5)(b)*, a person is entitled to exercise or control the exercise of any right conferred by the holding of shares if the person—

(a) has a right (whether subject to conditions or not) the exercise of which would make him or her so entitled; or

(b) is under an obligation (whether so subject or not) the fulfilment of which would make him or her so entitled.

(7) For the relevant purposes, a person is taken to have an interest in shares or debentures if, otherwise than by virtue of having an interest under a trust, the person has a right to acquire an interest in shares or debentures, as appropriate, or is under an obligation to take an interest in shares or debentures, as appropriate, whether in any case the right or obligation is conditional or absolute.

(8) Without prejudice to *subsections (2) and (3)*, rights or obligations to subscribe for any shares shall not be taken for the purposes of *subsection (7)* to be rights to acquire, or obligations to take, any interest in shares.

(9) Where persons have a joint interest, each of them shall be taken, for the relevant purposes, to have that interest.

Family and corporate interests.

[805]. (1) For the purposes of *section [803]*, a person is taken to be interested in any shares or debentures in which the person's spouse or civil partner or any child (who is a minor) of the person is interested.

(2) For the purposes of *section [803]* and *subsection (1)*, a person is taken to be interested in shares or debentures if a body corporate is interested in them and—

(a) that body or its directors are accustomed to act in accordance with his or her directions or instructions; or

(b) he or she is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

(3) Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate (the "effective voting power") then, for the purposes of *subsection (2)(b)*, the effective voting power is taken as exercisable by that person.

(4) For the purposes of *subsections (2)* and *(3)* a person is entitled to exercise or control the exercise of voting power if—

(a) the person has a right (whether subject to conditions or not) the exercise of which would make him or her so entitled; or

(b) the person is under an obligation (whether or not so subject) the fulfilment of which would make him or her so entitled.

(5) A reference in this section to a child of a person shall be deemed to include a reference to a child of the person's civil partner who is ordinarily resident with the person and the civil partner.

Share acquisition agreements – attribution of interests held by other parties.

[806]. (1) In the case of a share acquisition agreement, each party to the agreement shall be taken, for the purposes of *section [803]*, to be interested in all shares in the company in which any other party to it is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

(2) For those purposes, an interest of a party to such an agreement in shares in the company is an interest apart from the agreement if the party is interested in those shares otherwise than by virtue of the application of this section and *section [808]* in relation to the agreement.

(3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his or hers –

(a) under the preceding provisions of this Chapter; or

(b) by the application of this section (and *section [808]*) in relation to any other agreement with respect to shares in the company to which he or she is a party.

Particulars of interests referred to in *section [806]* to be given in compliance with disclosure order.

[807]. In addition to the particulars (if any) to be given otherwise by the person in compliance with such order, the particulars given, in compliance with a disclosure order, with respect to his or her interest in shares in the company by a person who is, or (as the case may be) was at any time in the period specified in the order, a party to a share acquisition agreement shall—

(a) state that the person is or (as the case may be) was at a particular time a party to such an agreement;

(b) include the names and (so far as known to him or her) the addresses of the other persons who are or (as the case may be) were at a particular time parties to the agreement, identifying them as such; and

(c) state whether or not any of the shares to which the particulars given in compliance with the disclosure order relate are shares in which he or she is or (as the case may be) was interested by virtue of *sections [806]* and *[808]* and, if so, the number of those shares.

“Share acquisition agreement” – meaning.

[808]. (1) Subject to the following provisions of this section, “share acquisition agreement”, for the purposes of this Chapter, means an agreement between 2 or more persons which includes provision for the acquisition by any one or more of the parties to the agreement of interests in shares comprised in the share capital of the company concerned but only if the following 2 conditions are satisfied.

(2) Those conditions are -

(a) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to the agreement with respect to their use, retention or disposal of interests in that company’s shares acquired in pursuance of the agreement (whether or not together with any other interests of theirs in that company’s shares to which the agreement relates); and

(b) any interest in the company’s shares is in fact acquired by any of the parties in pursuance of the agreement.

(3) The reference in *subsection (2)(a)* to the use of interests in shares in the company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into any agreement for the exercise, or for control of the exercise, of any of those rights by another person).

(4) Once any interest in shares in the company has been acquired in pursuance of such an agreement as is mentioned in *subsection (1)*, the agreement continues to be a share acquisition agreement for the purposes of this Chapter irrespective of—

- (a) whether or not any further acquisitions of interests in the company's shares take place in pursuance of the agreement; and
- (b) any change in the persons who are for the time being parties to it; and
- (c) any variation of the agreement, so long as the agreement continues to include provisions of any description mentioned in *subsection (2)(a)*.

(5) References in *subsection (4)* to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

(6) In this section, and also in references elsewhere in this Chapter to a share acquisition agreement as defined by this section, “agreement” includes any agreement or arrangement; and references in this section to provisions of an agreement—

- (a) accordingly include undertakings, expectations or understandings operative under any arrangement; and
- (b) (without prejudice to the foregoing) also include any provisions, whether express or implied and whether absolute or not.

(7) An agreement which is not legally binding is not a share acquisition agreement for the purposes of this Chapter unless it involves mutuality in the undertakings, expectations or understandings of the parties to it.

Supplemental power of court in relation to a share acquisition agreement.

[809]. (1) The court has the following power if -

- (a) on the making of an application for a disclosure order; or
- (b) at any time subsequent to the making of such an order (on application to the court in that behalf),

it has grounds to believe that all of the information sought to be obtained by the disclosure order will not, or may not, be obtained by reason of a person who is both -

- (i) a party or former party to a share acquisition agreement; and
- (ii) the person against whom the order is sought to be, or has been, made, appearing not to be in possession of all the facts

relevant to the application of *section [806]* as it applies, or applied, to that agreement.

(2) That power of the court is to make an order requiring any other party or former party to the share acquisition agreement to give, in writing, to the court such particulars as the court specifies, and which the party or former party is able to give, in relation to matters affecting the application of *section [806]* as it applies, or applied, to that agreement and, in particular, the party's or former party's interests in shares in the company that are or were the subject of attribution to another party to that agreement by virtue of that

application.

(3) An application under *subsection (1)(b)* may be made by a person having a financial interest (within the meaning of *section [800]*) in the company or by the Director.

(4) A person intending to make an application under *subsection (1)(b)* shall give not less than 10 days' notice of the intention to apply to -

- (a) the company in respect of whose shares the order is sought; and
- (b) the person to whom the order is to be directed.

(5) An applicant under *subsection (1)(b)* shall also serve on any person specified by the court such notice of the application as the court may direct.

(6) On the hearing of an application under *subsection (1)(b)* every person notified under *subsection (4)* or *(5)* may appear and adduce evidence.

Court may grant exemption from requirements of disclosure order.

[810]. (1) The court may, in making a disclosure order, include an exemption for any of the following persons or interests from all or part of the requirements of a disclosure order:

- (a) any person, group or class of persons;
- (b) any interest or class of interest in shares or debentures;
- (c) any shares or group or class of shares;
- (d) any debentures or group or class of debentures.

(2) The court may grant such an exemption only if it considers that -

- (a) it would be just and equitable to do so; and
- (b) the financial interest of the applicant for the disclosure order would not be prejudiced by the grant of the exemption.

Other powers of court in relation to disclosure orders.

[811]. (1) The court may, on cause shown, discharge or vary a disclosure order.

(2) A disclosure order may specify a person, group or class of persons to which the order applies.

(3) Where the court makes a disclosure order, it may impose, for a specified period of time, such conditions or restrictions as it thinks fit on the rights or obligations attaching to the shares or debentures that are the subject of the order.

(4) Any person whose interests are affected by any conditions or restrictions imposed on shares or debentures under *subsection (3)* may apply to the court for relief from all or any of those conditions or restrictions, and the court may, if it considers it just and equitable to do so, grant such relief, in whole or in part, and on such terms and conditions (if any) as it sees fit.

Notice of disclosure order.

[812]. (1) The applicant for a disclosure order shall ensure that a notice in the prescribed form of the making of the disclosure order is

sent, with a copy of the order, to the following:

- (a) the company (at its registered office) whose shares or debentures are the subject of the order;
- (b) the Registrar;
- (c) the registered holder of any of the shares or debentures that are the subject of the order where it appears to the court that that person -
 - (i) is not resident in the State at the date of the making of the order; and
 - (ii) should be notified; and
- (d) any other person as the court sees fit.

(2) The notice shall be sent -

- (a) by registered post; and
- (b) within 7 days after the date of the making of the order.

(3) The applicant shall ensure that notice of the making of the disclosure order is published in [*Iris Oifigiúil*]⁴³³ within 7 days after the date of the making of the order.

(4) For the purposes of *subsection (1)(c)* -

- (a) the address of a registered holder of shares or debentures who is not resident in the State shall be deemed to be the address of that holder that was last delivered to the Registrar or otherwise published, as the case may be, in accordance with this Act before the date of making the order; or
- (b) if no address of the non-resident registered holder has ever been duly delivered to the Registrar or otherwise so published, the requirements of *subsection (1)(c)* are complied with by sending the notice and copy of the order to the Registrar.

Information disclosed under order.

[813]. (1) A person who is the subject of a disclosure order shall provide the information in a written notice.

(2) The notice shall identify the person providing the information and give that person's current address, and that person does not comply with the disclosure order if the requirement with respect to the person's identity and current address is not met.

(3) Where information is given to the court in compliance with a disclosure order, a prescribed officer of the court shall ensure that the information is provided to the applicant and the company unless the court directs otherwise (which may include a direction that only part of the information shall be provided).

(4) In making a direction under *subsection (3)*, the court shall have regard to whether the requirements of *section [812]* have been met.

Court may impose restrictions on publication of information provided.

[814]. Where any information is provided to the applicant or the company under *section [813](3)*, the court may impose such

⁴³³ Substituted by point 101 of Committee Amendments.

restrictions as it sees fit as to the publication of the information by the person to whom it has been provided.

Right or interest in shares or debentures unenforceable by person in default.

[815]. (1) A person who is the subject of a disclosure order shall not be entitled to enforce any right or interest of any kind whatsoever in respect of any shares in or debentures of the company concerned held by that person if that person -

- (a) fails to comply with the order within the period specified in the order; or
- (b) in purported compliance with the order makes a statement to the court that is false knowing it to be false or being reckless as to whether it is false.

(2) In [*subsection (1)*]⁴³⁴, “enforce” means enforce by action or legal proceeding, whether directly or indirectly.

Court may grant relief from restriction on enforceability of right or interest in shares or debentures.

[816]. (1) Subject to *subsections (2) and (5)*, where any right or interest is restricted under *section [815]*, the court, on the application of a person specified in *subsection (3)*, may grant relief from that restriction.

(2) The court may grant relief if it is satisfied that -

- (a) the default was accidental or due to inadvertence or some other sufficient cause; or
- (b) on other grounds it is just and equitable to do so.

(3) The court may grant relief on the application of-

- (a) the person in default; or
- (b) any other person affected by the restriction.

(4) The court may grant relief -

- (a) generally;
- (b) in relation to a particular right or interest; or
- (c) subject to such terms and conditions as it sees fit.

(5) The court may not grant relief on the application of the person in default if it appears that the default has arisen as a result of a deliberate act or omission on the part of that person.

Dealing by agent in shares or debentures subject to disclosure order.

[817]. (1) This section applies where a person (the “principal”) authorises another person (the “agent”) to acquire or dispose of, on the principal’s behalf, interests in shares (the “shares”) comprised in the share capital of a company, or in debentures (the “debentures”) of the company, in respect of which a disclosure order is made.

(2) For the duration of the disclosure order, the principal shall ensure that the agent notifies the principal immediately of acquisitions or disposals of the shares or debentures effected by the agent that will or may give rise to any obligation under the order on the part of

⁴³⁴ Substituted by point 123 of Seanad Committee Amendments.

the principal to provide information in respect of the principal's interest in the shares or debentures.

Chapter 3

Restrictions on directors of insolvent companies

Interpretation and application (Chapter 3).

[818]. (1) In this Chapter -

“company”, in the context of a provision that imposes a restriction on a company by reference to the fact of its having a restricted person (within the meaning of *section [826]*) or otherwise makes provision in consequence of that fact, means any company referred to in *section [819](6)*;

“director of an insolvent company” means a person who was a director or shadow director of an insolvent company at the date of, or within 12 months before, the commencement of its winding up;

“insolvent company” means a company that is unable to pay its debts;

“restricted person” means a person who is subject to a restriction under a declaration made under *section [819](1)* that is in force.

(2) For the purposes of the definition of “insolvent company” in *subsection (1)*, a company is unable to pay its debts if -

(a) at the date of the commencement of its winding up it is proved to the court that it is unable to pay its debts (within the meaning of *section [570]*); or

(b) at any time during the course of its winding up the liquidator certifies, or it is proved to the court, that it is unable to pay its debts (within the meaning of *section [570]*).

(3) For the purpose of a restriction imposed pursuant to this Part on a person's acting as a director of a company, that restriction shall, in the case of a person who continues in office as a director of a company on the restriction taking effect (and the requirements set out in *section [819](3)* are not met in respect of the company), be deemed, without proof of anything more, to have been contravened.

(4) This Chapter shall not apply to a company that commenced to be wound up before 1 August 1991.

Declaration by court restricting director of insolvent company in being appointed or acting as director etc.

[819]. (1) On the application of a person referred to in *section [820](1)* and subject to *subsection (2)*, the court shall declare that a person who was a director of an insolvent company shall not, for a period of 5 years, be appointed or act in any way, directly or indirectly, as a director or secretary of a company, or be concerned in or take part in the formation or promotion of a company, unless the company meets the requirements set out in *subsection (3)*.

(2) The court shall make a declaration under *subsection (1)* unless it is satisfied that -

(a) the person concerned has acted honestly and responsibly in relation to the conduct of the affairs of the company in question, whether before or after it became an insolvent company;

(b) he or she has, when requested to do so by the liquidator of the insolvent company, cooperated as far as could

reasonably be expected in relation to the conduct of the winding up of the insolvent company; and

(c) there is no other reason why it would be just and equitable that he or she should be subject to the restrictions imposed by an order under *subsection (1)*.

(3) The requirements referred to in *subsection (1)* are:

(a) the company shall have an allotted share capital of nominal value not less than-

- (i) [€500,000]⁴³⁵ in the case of a public limited company (other than an investment company) or a public unlimited company; or
- (ii) [€100,000]⁴³⁶ in the case of any other company;

(b) each allotted share shall be paid up to an aggregate amount not less than the amount referred to in *paragraph (a)*, including the whole of any premium on that share; and

(c) each allotted share and the whole of any premium on each allotted share shall be paid for in cash.

(4) In the application of *subsection (3)* to a company limited by guarantee, *paragraphs (a) to (c)* of it shall be disregarded and, instead, that subsection shall be read as if it set out both of the following requirements -

- (a) that the company's memorandum of association specifies that the amount of the contribution on the part of the member of it, or at least one member of it, being the contribution undertaken to be made by the member as mentioned in *section [H761175](2)(d)*, is not less than [€100,000]⁴³⁷;
- (b) that the member whose foregoing contribution is to be not less than that amount is an individual, as distinct from a body corporate.

(5) In the application of *subsection (3)* to an investment company, *paragraphs (a) to (c)* of it shall be disregarded and, instead, that subsection shall be read as if it set out both of the following requirements -

- (a) that the value of the issued share capital of the company is not less than [€100,000]⁴³⁸;
- (b) that an amount of not less than [€100,000]⁴³⁹ in cash has been paid in consideration for the allotment of shares in the company.

(6) Where *subsection (1)* refers to being appointed or acting as a director or secretary of a company, or taking part in the formation or promotion of a company, "company" means any of the following:

- (a) a private company limited by shares;
- (b) a designated activity company;
- (c) a public limited company;
- (d) a company limited by guarantee;
- (e) an unlimited company;
- (f) an unregistered company.

⁴³⁵ Substituted by point 102 of Committee Amendments.

⁴³⁶ Substituted by point 103 of Committee Amendments.

⁴³⁷ Substituted by point 104 of Committee Amendments.

⁴³⁸ Substituted by point 105 of Committee Amendments.

⁴³⁹ Substituted by point 106 of Committee Amendments.

(7) A prescribed officer of the court shall ensure that the prescribed particulars of a declaration under this section are provided to the Registrar in the prescribed form and manner (if any).

Application for declaration of restriction.

[820]. (1) An application for a declaration under *section [819](1)* may be made by -

- (a) the Director;
- (b) the liquidator of the insolvent company; or
- (c) a receiver of the property of the company.

(2) The court may order that the person who is the subject of the declaration shall pay -

- (a) the costs of the application; and
- (b) the whole (or so much of them as the court specifies) of the costs and expenses incurred by the applicant -
 - (i) in investigating the matters that are the subject of the application, and
 - (ii) in so far as they do not fall within *paragraph (a)*, in collecting evidence in respect of those matters, including so much of the remuneration and expenses of the applicant as are attributable to such investigation and collection.

Liquidator shall inform court of jeopardy to other company or its creditors.

[821]. (1) This section applies if the liquidator of an insolvent company is of the opinion that -

- (a) a restricted person is appointed or is acting in any way, whether directly or indirectly, as a director of, or is concerned or taking part in the formation or promotion of, another company; and
- (b) the interests of that other company or its creditors may be jeopardised by the matters referred to in *paragraph (a)*.

(2) In any case to which this section applies -

- (a) the liquidator shall inform the court of his or her opinion as soon as practicable; and
- (b) the court, on being so informed by the liquidator, shall make whatever order it sees fit.

(3) A liquidator who, without reasonable excuse, fails to comply with *subsection (2)(a)* shall be guilty of a category 3 offence.

(4) In this section “company” means any company referred to in *section [819](6)*.

Court may grant restricted person relief from restrictions.

[822]. (1) On the application of a restricted person, the court may, if it deems it just and equitable to do so, grant that person relief, either in whole or in part, from -

- (a) any restriction under a declaration made under *section [819](1)*; or
- (b) an order made under *section [821](2)(b)*.

(2) Such relief may, if the court considers it appropriate, be granted on such terms and conditions as it sees fit.

(3) A person who intends applying for relief under *subsection (1)* shall give not less than 14 days’ notice in writing of his or her

intention to apply to -

- (a) the Director; and
- (b) the liquidator of the company the insolvency of which gave rise to the application for the declaration made in respect of him or her under *section [819](1)*.

(4) On receipt of a notice under *subsection (3)*, the liquidator shall as soon as practicable notify such creditors and contributories of the company as have been notified to the liquidator or become known to the liquidator.

(5) On the hearing of an application under this section, the Director, the liquidator, or any creditor or contributory of the company may appear and give evidence.

(6) A liquidator who fails to comply with *subsection (4)* shall be guilty of a category 3 offence.

Register of restricted persons.

[823]. (1) The Registrar shall, subject to the provisions of this section, keep a register of the particulars notified to him or her under *section [819](7)*.

(2) Where the court grants partial relief to a restricted person under *section [822](1)* -

- (a) a prescribed officer of the court shall ensure that the prescribed particulars of the relief are provided to the Registrar; and
- (b) the Registrar shall as soon as practicable enter those particulars on the register.

(3) Where the court grants full relief to a restricted person under *section [822](1)* -

- (a) a prescribed officer of the court shall ensure that the Registrar is notified; and
- (b) the Registrar shall as soon as practicable remove the particulars of that person from the register.

(4) The Registrar shall remove from the register any particulars of a restricted person on the expiry of 5 years after the date of the declaration made in respect of that person under *section [819](1)*.

(5) Nothing in this section shall prevent the Registrar from keeping the register required under this section as part of any other system of classification, whether under *section [894]* or otherwise.

Application of this Chapter to receivers.

[824]. (1) Where a receiver of the property of a company is appointed, the provisions of this Chapter shall, with the modification referred to in *subsection (2)* and any other necessary modifications, apply as if references in this Chapter to the liquidator and to winding up were references to the receiver and to receivership.

(2) The modification mentioned in *subsection (1)* is that in the definition of “director of an insolvent company” in *section [818](1)* the words “director or shadow director of an insolvent company at the date of, or within 12 months before, the appointment of a receiver to the property of the company” shall be substituted for the words “director or shadow director of an insolvent company at the date of, or within 12 months before, the date of the commencement of its winding up”.

Restricted person shall give notice to company before accepting appointment or acting as director or secretary.

[825]. (1) A restricted person shall not be appointed or act in any way, whether directly or indirectly, as a director or secretary of a company unless he or she has given the company notice in writing in accordance with *subsection (2)* that he or she is a restricted person.

(2) The restricted person shall send the notice to the registered office of the company within the period of 14 days immediately before date on which the restricted person accepts the appointment or acts in any way referred to in *subsection (1)*.

(3) A person who accepts the appointment or acts in any way referred to in *subsection (1)* without having complied with that subsection shall be guilty of a category 3 offence.

(4) In this section “company” means any company referred to in *section [819](6)*.

“Company that has a restricted person” – meaning of that expression in sections [827] to [834].

[826]. In sections [827] to [834] “company that has a restricted person” means a company -

(a) in relation to which a restricted person is appointed or acts in any way, whether directly or indirectly, as a director or secretary; or

(b) in the promotion or formation of which a restricted person is concerned or takes part.

Disapplication of certain provisions to company having a restricted person.

[827]. (1) Subject to *subsection (2)*, the Summary Approval Procedure shall not apply to a company that has a restricted person.

(2) *Subsection (1)* does not affect the availability of that procedure so far as it relates to a members’ voluntary winding up.

(3) Without prejudice to *section [247]*, *sections [240]* and *[245]* shall not apply to a company that has a restricted person.

Company having a restricted person may not acquire certain non-cash assets from subscribers, etc. unless particular conditions satisfied.

[828]. (1) A company that has a restricted person shall not, unless the conditions specified in *subsection (3)* have been satisfied, enter into an agreement with a relevant person for the transfer by him or her of one or more non-cash assets to the company or another for a consideration to be given by the company equal in value at the time of the agreement to at least one-tenth of the nominal value of the company’s share capital issued at that time.

(2) In this section –

“non-cash asset” means any property or interest in property other than cash (including foreign currency);

“relevant person”, in relation to a company, means any subscriber to the constitution, any director or any person involved in the promotion or formation of the company.

(3) The conditions referred to in *subsection (1)* are that—

- (a) the consideration to be received by the company (that is to say, the asset to be transferred to the company or the advantage to the company of its transfer to another person) and any consideration other than cash to be given by the company have been valued under the following provisions of this section;
- (b) a report with respect to the consideration to be so received and given has been made to the company in accordance with those provisions during the 6 months immediately preceding the date of the agreement;
- (c) the terms of the agreement have been approved by an ordinary resolution of the company; and
- (d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report have been circulated to the members of the company entitled to receive that notice and, if the relevant person is not then such a member, to that person.

(4) *Subsection (1)* shall not apply to the following agreements for the transfer of an asset for a consideration to be given by the company, that is to say—

- (a) where it is part of the ordinary business of the company to acquire or arrange for other persons to acquire assets of a particular description, an agreement entered into by the company in the ordinary course of its business for the transfer of an asset of that description to it or such a person, as the case may be; or
- (b) an agreement entered into by the company under the supervision of the court or an officer authorised by the court for the purpose, for the transfer of an asset to the company or to another.

(5) Subject to *subsection (6)*, the valuation and report required by *subsection (3)* shall be made by an independent person, that is to say, a person qualified at the time of the report to be appointed or to continue to be statutory auditor of the company.

(6) Where it appears to the independent person referred to in *subsection (5)* to be reasonable for the valuation of the consideration, or a valuation of part of the consideration, to be made, or to accept such a valuation made, by any person who—

(a) appears to that independent person to have the requisite knowledge and experience to value the consideration or that part of the consideration; and

(b) is not –

(i) an officer or employee of the company or any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company; or

(ii) a partner or employee of an officer or employee referred to in *subparagraph (i)*,

that independent person may arrange for or accept such a valuation, together with a report which will enable the independent person to make his or her own report under *subsection (3)* and provide a note in accordance with *subsection (7)*.

(7) The report of the independent person under *subsection (3)* shall—

- (a) state the consideration to be received by the company, describing the asset in question, specifying the amount to be received in cash, and the consideration to be given by the company, specifying the amount to be given in cash;
- (b) state the method and date of valuation;
- (c) contain a note by the independent person, or be accompanied by such a note –
 - (i) in the case of a valuation made by another person, that it appeared to the independent person reasonable to arrange for it to be so made, or to accept a valuation so made;
 - (ii) whoever made the valuation, that the method of valuation was reasonable in all the circumstances; and
 - (iii) that it appears to the independent person that there has been no material change in the value of the consideration in question since the valuation;

and

- (d) contain a note by the independent person, or be accompanied by such a note, that, on the basis of the valuation, the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.

(8) Where any consideration is valued under this section by a person other than the independent person, the latter's report under *subsection (3)* shall state that fact and shall also—

- (a) state the former's name and what knowledge and experience that other person has to carry out the valuation;
- and

- (b) describe so much of the consideration as was valued by that other person, the method used to value it and state the date of valuation.

(9) If a company enters into an agreement with any relevant person in contravention of *subsection (1)* and either the relevant person has not received a report under this section or there has been some other contravention of this section which he or she knew or ought to have known amounted to a contravention, then, subject to *subsection (10)*—

- (a) the company shall be entitled to recover from the relevant person any consideration given by the company under the agreement or an amount equivalent to its value at the time of the agreement; and
- (b) the agreement, so far as not carried out, shall be void.

(10) Where a company enters into an agreement in contravention of *subsection (1)* and that agreement is or includes an agreement for the allotment of shares in that company -

- (a) *subsection (9)* shall not apply to the agreement in so far as it is an agreement for the allotment of shares; and
- (b) the following provisions shall apply in relation to the shares as if they had been allotted in contravention of *section [10291027]*.

(11) The provisions referred to in *subsection (10)(b)* are as follows –

- (a) the allottee of the shares concerned shall be liable to pay the company an amount equal to the nominal value of the shares, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the consideration, and shall be liable to pay interest at the appropriate rate on the amount payable under this paragraph; and
- (b) where any person becomes a holder of any shares in respect of which—
 - (i) there has been a contravention of this section; and
 - (ii) by virtue of that contravention, another is liable to pay any amount under this subsection, the first-mentioned person in this paragraph also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either that first-mentioned person is a purchaser for value and, at the time of the purchase, he or she did not have actual notice of the contravention or he or she derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not so liable.

Supplemental provisions in relation to *section [828]*.

[829]. (1) Any person carrying out a valuation or making a report under *section [828]* shall be entitled to require from the officers of the company such information and explanation as the person thinks necessary to enable him or her to carry out the valuation or make the report and provide the note required by that section.

(2) A company which has passed a resolution under *section [828]* with respect to the transfer of an asset shall, within 15 days after the date of passing of the resolution, deliver to the Registrar a copy of the resolution together with the report required by that section and, if the company fails to do so, the company and any officer of it who is in default shall be guilty of a category 4 offence.

(3) Any reference in *section [828]* or this section to consideration given for the transfer of an asset includes a reference to consideration given partly for its transfer but—

- (a) the value of any consideration partly so given shall be taken to be the proportion of that consideration properly attributable to its transfer;
- (b) the independent person shall carry out or arrange for such valuations of anything else as will enable him or her to determine that proportion; and
- (c) his or her report under *section [828]* shall state what valuation has been made by virtue of *paragraph (b)* and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

(4) References in *section [828]* to a holder, in relation to any shares in a company, include references to any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his or her favour.

Relief from liability under *section [828]*.

[830]. (1) Where any person is liable to a company under *section [828]* in relation to payment in respect of any shares in the company, the person so liable may make an application to the court under this section to be exempted in whole or in part from that liability.

(2) The court may, on an application under this section, exempt the applicant from that liability if and to the extent that it appears to the court to be just and equitable to do so.

Offence for contravention of *section [828]*.

[831]. Where a company contravenes *section [828]*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Allotment of share not fully paid up by company that has a restricted person.

[832]. (1) This section applies if a company that has a restricted person allots a share that is not fully paid up as required by *section [819](3)(b)*.

(2) Subject to *subsection (3)*, in any case to which this section applies, the share shall be treated as if its nominal value together with the whole of any premium had been received by the company.

(3) The allottee of the share shall be liable to pay the company -

(a) the full amount that should have been received by the company as required by *section [819](3)(b)* less-

(i) the value of any consideration actually applied in payment up (to any extent) of the share; and

(ii) the whole of any premium on the share; and

(b) interest at the appropriate rate on the amount payable under *paragraph (a)*.

- (4) This section does not apply in relation to -
- (a) a bonus share that is not fully paid up as required by *section [819](3)(b)* unless the allottee knew or ought to have known that the share was so allotted; or
 - (b) a share allotted under an employees' share scheme.
- (5) Where any person becomes a holder of any shares in respect of which—
- (a) there has been a failure to comply with *section [819](3)(b)*; and
 - (b) by virtue of that failure to comply, another is liable to pay any amount under this section,
- the first-mentioned person in this subsection also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either that first-mentioned person is a purchaser for value and, at the time of the purchase, he or she did not have actual notice of that non-compliance or he or she derived title to the shares (directly or indirectly) from a person who became a holder of them after that non-compliance and was not so liable.
- (6) In this section -
- (a) "employees' share scheme" has the meaning given to it by *section [64](1)*;
 - (b) references to a holder, in relation to any shares in a company, include references to any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his or her favour.

Allotment of share not fully paid for in cash by company that has a restricted person.

[833]. (1) This section applies if a company that has a restricted person allots a share that is not fully paid for in cash as required by *section [819](3)(c)*.

- (2) In any case to which this section applies, the allottee of the share shall be liable to pay the company in cash -
- (a) an amount equal to the nominal value of the share, together with the whole of any premium; and
 - (b) interest at the appropriate rate on the amount payable under *paragraph (a)*.
- (3) Where any person becomes a holder of any shares in respect of which—
- (a) there has been a failure to comply with *section [819](3)(c)*; and
 - (b) by virtue of that failure to comply, another is liable to pay any amount under this section,
- the first-mentioned person in this subsection also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either that first-mentioned person is a purchaser for value and, at the time of the purchase, he or she did not have actual notice of that non-compliance or he or she derived title to the shares (directly or indirectly) from a person who became a holder of them after that non-compliance and was not so liable.
- (4) In this section references to a holder, in relation to any shares in a company, include references to any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his or her favour.

Relief for company in respect of prohibited transaction.

[834]. (1) Subject to *subsection (2)*, the court may, if it considers it just and equitable, grant relief to -

- (a) any company that has a restricted person that by virtue of *section [827]* has contravened any provision of this Act;
or
- (b) any person adversely affected by that contravention.

(2) The court shall not grant relief to a company in respect of a contravention if the restricted person concerned complied with *section [825]*.

(3) The court may grant such relief, under this section, as it thinks fit, including an exemption from the provision in question, and on such terms and conditions as it thinks fit.

Power to vary amounts specified in *section [819](3)*.

[835]. (1) Subject to *subsection (4)*, the Minister may from time to time, by order, increase any amount specified in *section [819](3)*.

(2) An increase by order made under *subsection (1)* shall not operate to effect any increase in relation to a declaration under *section [819](1)* made before the commencement of the order.

(3) The requirements set out in *section [819](3)* that shall apply in respect of a restricted person by virtue of such a declaration made before that commencement shall be those that applied at the time of the making of the order.

(4) An order under *subsection (1)* may only be made, at a particular time (the “relevant time”), if it appears to the Minister the changes in the value of money generally in the State that have occurred during the period beginning –

- (a) on this Act’s passing; or
- (b) if the powers under that subsection have previously been exercised, immediately after their last previous exercise,

and ending at the relevant time warrant the exercise of powers under that subsection so as to secure the continued effectiveness of *section [819]* as regards the amounts specified for the time being in *subsection (3)* of it.

Personal liability for debts of company subject to restriction.

[836]. (1) This section applies where a company -

- (a) has received a notice under *section [825]*;
- (b) after receipt of the notice, carries on business without the requirements of *section [819](3)* being fulfilled within a reasonable period of receipt;
- (c) is subsequently wound up; and
- (d) at the time of commencement of the winding up is unable to pay its debts (taking into account its contingent and prospective liabilities).

(2) On the application of the liquidator or any creditor or contributory of the company, the court may declare that a person shall be personally liable, without any limitation of liability, for all or part of the debts or other liabilities of the company as the court directs if that person -

- (a) was an officer of the company while it carried on business without the requirements of *section [819](3)* being

fulfilled within a reasonable period of receipt of the notice referred to in *subsection (1)(a)*; and

(b) knew or ought to have known that the company had received the notice.

(3) In any proceedings against a person under this section, the court may, if, having regard to the circumstances of the case, it considers that it is just and equitable to do so, grant relief -

(a) in whole or in part from the liability of that person under this section; and

(b) subject to such conditions as the court sees fit.

Chapter 4

Disqualification generally

Interpretation generally (*Chapter 4*).

[837]. In this Chapter -

“company” includes every company and every body, whether corporate or unincorporated, that may be wound up under this Act;

“court”, in relation to a disqualification order made by a court of its own motion under *section [842](a), (b), (c), (d) or (f)*, means the High Court or any other court of competent jurisdiction dealing with the person concerned in criminal or civil proceedings before it;

“default order” means an order made against any person under *section [797]* by virtue of any contravention of or failure to comply with any relevant requirement (whether on that person’s part or on the part of any company);

“officer”, in relation to any company, includes any director, shadow director or secretary of the company;

“relevant requirement” means any provision of this Act (including any provision repealed by this Act) that requires or required any return, account or other document to be filed with, delivered or sent to, or notice of any matter to be given, to the Registrar.

Meaning of “disqualified” and “disqualification order”.

[838]. In this Chapter -

“disqualification order” means an order of the court that a person shall be disqualified;

“disqualified”, in relation to a person, means the person’s being disqualified from being appointed or acting as a director or other officer, statutory auditor, receiver, liquidator or examiner or being in any way, whether directly or indirectly, concerned or taking part in the promotion, formation or management of each of the following :

(a) a company within the meaning of *section [819](6)*;

(b) any friendly society within the meaning of the Friendly Societies Acts 1896 to [\[19772014\]](#)⁴⁴⁰;

(c) any society registered under the Industrial and Provident Societies Acts 1893 to [\[19782014\]](#)⁴⁴¹.

⁴⁴⁰ [Substituted by point 77 of Seanad Report Amendments.](#)

Automatic disqualification on conviction of certain indictable offences.

[839]. (1) A person is automatically disqualified if that person is convicted on indictment of -

- (a) any offence under this Act, or any other enactment as may be prescribed, in relation to a company; or
- (b) any offence involving fraud or dishonesty.

(2) A person disqualified under *subsection (1)* is disqualified for a period of 5 years after the date of conviction or for such other (shorter or longer) period as the court, on the application of the prosecutor or the defendant and having regard to all the circumstances of the case, may order.

(3) A person disqualified under *subsection (1)* is deemed, for the purposes of this Act, to be subject to a disqualification order for the period of his or her disqualification.

(4) *Subsection (1)* is in addition to the other provisions of this Act providing that, upon conviction of a person for a particular offence, the person is deemed to be subject to a disqualification order.

Default under section [149](8) concerning fact of director's becoming disqualified under law of another state.

[840]. (1) In this section -

“relevant change amongst its directors”, in relation to a company, means the change referred to in *section [150](1)*, namely the case of a director's becoming disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking;

“relevant director” means the director of the company who has become so disqualified under the law of another state;

“statement of particulars of foreign disqualification” means the statement of particulars of disqualification that is required under *section [150](1)*.

(2) If -

- (a) a company fails to comply with the requirement under *section [149](8)* to send to the Registrar the notification of the relevant change amongst its directors and that failure is by reason of a default of the relevant director; or
- (b) in purported compliance with that requirement, a company sends to the Registrar the notification of the relevant change amongst its directors and, by reason of a default of the relevant director, the statement of particulars of foreign disqualification is false or misleading in a material respect,

the relevant director shall be deemed, for the purposes of this Act, to be subject to a disqualification order for the period specified in *subsection (3)*.

(3) The period of disqualification -

(a) commences -

- (i) in the case of a failure referred to in *subsection (2)(a)*, on the expiry of 14 days after the date on which the relevant director has become disqualified, as mentioned in the definition of “relevant change amongst its directors” in *subsection (1)*, under the law of another state; or

⁴⁴¹ [Substituted by point 78 of Seanad Report Amendments.](#)

- (ii) in the case, as referred to in *subsection (2)(b)*, of the sending of a statement of particulars of foreign disqualification to the Registrar that is false or misleading in a material respect, when that statement is delivered to the Registrar;

and

- (b) continues only for so much of-

- (i) the period of foreign disqualification as remains unexpired as at the date of commencement referred to in *paragraph (a)*; or
- (ii) if the person is disqualified under the law of more than one state, and the unexpired periods of disqualification in each of the states are not equal, whichever unexpired period of disqualification is the greatest.

(4) Without limiting the circumstances in which such a default can arise, a failure referred to in –

- (a) *subsection (2)(a)* occurs by reason of a default of the relevant director if the latter has failed in his or her duty under *section [150](3)* to give the necessary information to the company so as to enable it to comply with the requirement under *section [149](8)* to send to the Registrar the notification of the relevant change amongst its directors; and

- (b) *subsection (2)(b)* occurs by reason of a default of the relevant director if the latter, in purported compliance with the foregoing duty, has given information to the company, for the purposes of the statement of particulars of foreign disqualification, that is false or misleading in a material respect.

[5] This section shall also apply to the additional case that, by virtue of *subsection (9) of section [150]*, *subsection (1) of section [150]* applies to.

(6) For the purposes of the application of this section to the foregoing additional case, this section shall have effect subject to the following modifications:

- (a) the following definition shall be substituted for the definition of “relevant change amongst its directors” in *subsection (1)*:

“ ‘relevant change amongst its directors’, in relation to a company, means the change referred to in *subsection (1) of section [150]* (as that subsection applies by virtue of *subsection (9) of that section*), namely the case of a person appointed a director of a company before the commencement of that section and who, subsequent to his or her appointment but before that commencement, becomes disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as director or secretary of a body corporate or an undertaking;”;

- (b) in *subsection (2)*, after “*section [149](8)*” there shall be inserted “(as that provision applies by virtue of *section [150](10)*)”

- (c) in *subsection (3)(a)*, there shall be substituted the following for subparagraph (i):

“(i) in the case of a failure referred to in *subsection (2)(a)*, on the expiry of 3 months after the commencement of *section [150]*; or”; and

- (d) in *subsection (3)(b)*, there shall be substituted the following for *subparagraph (i)*:
“(i) the period of foreign disqualification as remains unexpired as at the date that is specified in *paragraph (a)* to be the date on which the period of disqualification commences;”.⁴⁴²

Default under *section 23* or *[150](2)* by director disqualified under law of another state.

[841]. (1) This section applies to a person if the person -

(a) is disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking; and

(b) one of the following occurs:

(i) the person fails to comply with *section 23* or *[150](2)*;

(ii) in purported compliance with *section 23*, the person permits the statement of first directors and secretary to be accompanied by a statement of particulars of foreign disqualification signed by him or her that is false or misleading in a material respect; or

(iii) in purported compliance with *section [150](2)*, the person permits the notification of change of director to be accompanied by a statement of particulars of foreign disqualification signed by him or her that is false or misleading in a material respect.

(2) A person to whom this section applies shall be deemed, for the purposes of this Act, to be subject to a disqualification order for the period specified in *subsection (3)*.

(3) The period of disqualification -

(a) commences-

(i) in the case of a default referred to in *subsection (1)(b)(i)*, when the statement of first directors and secretary or notification of change of director, as the case may be, is delivered to the Registrar; or

(ii) in the case of a default referred to in *subsection (1)(b)(ii)* or *(iii)*, when the statement of first directors and secretary or notification of change of director, as the case may be, accompanied by the statement of particulars of foreign disqualification is delivered to the Registrar; and

(b) continues only for so much of-

(i) the period of foreign disqualification as remains unexpired as at the date of commencement referred to in *paragraph (a)*; or

(ii) if the person is disqualified under the law of more than one state, and the unexpired periods of disqualification in each of the states are not equal, whichever unexpired period of disqualification is the greatest.

(4) In this section -

“notification of change of director” means the notification of a change in director that is required to be sent under *section*

⁴⁴² Inserted by point 183 of Report Amendments.

[149](8);

“statement of first directors and secretary” means the statement required to be delivered under *section 21(1)(a)*;

“statement of particulars of foreign disqualification” means the statement of particulars of disqualification that is required under *section 23* or [150](2).

Court may make disqualification order.

[842]. On the application of a person specified in *section [844]* or of its own motion, the court may make a disqualification order in respect of a person for such period as it sees fit if satisfied -

- (a) that the person has been guilty, while a promoter, officer, statutory auditor, receiver, liquidator or examiner of a company, of any fraud in relation to the company, its members or creditors;
- (b) that the person has been guilty, while a promoter, officer, statutory auditor, receiver, liquidator or examiner of a company, of any breach of his or her duty as such promoter, officer, auditor, receiver, liquidator, or examiner;
- (c) that a declaration has been granted under *section [610]* in respect of the person;
- (d) that the conduct of the person as promoter, officer, statutory auditor, receiver, liquidator or examiner of a company makes him or her unfit to be concerned in the management of a company;
- (e) that, as disclosed in a report of inspectors appointed by the court or the Director under this Act, the conduct of the person makes him or her unfit to be concerned in the management of a company;
- (f) that the person has been persistently in default in relation to the relevant requirements;
- (g) that the person has been guilty of 2 or more offences under *section [286]*;
- (h) that the person was a director of a company when a notice was sent to the company under *section [727]* and the company, following the taking of the other steps under *Chapter 1 of Part 12* consequent on the sending of the notice, was struck off the register under *section [733]*; or
- (i) that-
 - (i) the person is disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking; and
 - (ii) it would have been proper to make a disqualification order against the person otherwise under this section if his or her conduct or the circumstances otherwise affecting him or her that gave rise to the foreign disqualification had occurred or arisen in the State.

Provisions relating to particular grounds for disqualification

[843]. (1) In relation to *section [842](f)*, the fact that a person has been persistently in default in relation to the relevant requirements may (without prejudice to its proof in any other manner) be conclusively proved by showing that, in the 5 years ending with the date of

the application, the person has been found guilty (whether or not on the same occasion) of 3 or more defaults in relation to those requirements.

(2) For the purposes of *subsection (1)*, a person shall be treated as having been found guilty of a default in relation to a relevant requirement if he or she is convicted of any offence consisting of a contravention of a relevant requirement or a default order is made against him or her.

(3) The court shall not make a disqualification order under *section [842](h)* if the person concerned shows that -

(a) the company in question had no liabilities (whether actual, contingent or prospective) when it was struck off the register; or

(b) in a case where the company did have such liabilities when it was struck off the register, those liabilities were discharged before the date of the making of the application for the disqualification order.

(4) The court may make a disqualification order under *section [842](i)* notwithstanding that under *section [840](2)* or *[841](2)* the person concerned is deemed for the purposes of this Act to be subject to a disqualification order.

(5) A disqualification order under *section [842](i)* shall express the period of disqualification to begin on the expiry of the disqualification period determined in accordance with *section [840](3)(b)* or *[841](3)(b)* or such shorter disqualification period following the grant of an application for relief under *section [847]*.

Persons who may apply for disqualification order under *section [842]*.

[844]. (1) The Director may make an application under any of *section [842](a) to (i)*.

(2) The Director of Public Prosecutions may make an application under any of *section [842](a) to (g)*.

(3) The Registrar may make an application under *section [842](f)*.

(4) An application under any of *section [842](a) to (d)* may be made by any member, contributory, officer, employee, receiver, liquidator, examiner or creditor of any company in relation to which the person who is the subject of the application -

(a) has been or is acting or is proposing to or is being proposed to act as officer, statutory auditor, receiver, liquidator or examiner; or

(b) has been or is concerned or taking part in, or is proposing to be concerned or take part in, the promotion, formation or management.

(5) The court may require a person who makes an application under *section [842]* to provide security for some or all of the costs of the application.

Miscellaneous provisions relating to disqualification by court order.

[845]. (1) Where it is intended to make an application under *section [842]* in respect of any person, the applicant shall give not less than 10 days' notice of his or her intention to that person.

(2) A disqualification order may be made on grounds that are or include matters other than criminal convictions notwithstanding that the person who is the subject of the order may be made criminally liable in respect of those matters.

(3) On an application for a disqualification order, the court may as an alternative, if it considers that disqualification is not justified,

make a declaration under *section [819]*.

Costs and expenses of application.

[846]. The court, on hearing an application under *section [842]*, may order that the person disqualified or against whom a declaration under *section [819]* is made as a result of the application (by virtue of *section [845](3)*) shall bear -

- (a) the costs of the application; and
- (b) in the case of an application by the Director, the Director of Public Prosecutions, a liquidator, a receiver or an examiner, the whole (or so much of them as the court specifies) of the costs and expenses that are incurred by the applicant -
 - (i) in investigating the matters that are the subject of the application; and
 - (ii) in so far as they do not fall within *paragraph (a)*, in collecting evidence in respect of those matters, including so much of the remuneration and expenses of the applicant as are attributable to such investigation and collection.

Court may grant relief to person subject to disqualification order.

[847]. (1) On the application by a person who is subject to a disqualification order, the court may, if it considers that it is just and equitable, grant relief from the disqualification -

- (a) in whole or in part; and
- (b) on such terms and conditions as it sees fit.

(2) Without prejudice to *subsection (3)*, in the case of an application for relief from a disqualification order made under *section [842]*, the application shall be served on -

- (a) the applicant for the disqualification order; and
- (b) the Director, if different from the applicant for the disqualification order.

(3) A person who intends applying for relief under *subsection (1)* shall give not less than 14 days' notice in writing of his or her intention to apply to -

- (a) the applicant for the disqualification order; and
- (b) the Director, if different from the applicant for the disqualification order.

(4) If the applicant for the disqualification order was the liquidator of a company, the insolvency of which gave rise to the application for the disqualification order, then, on receipt of a notice under *subsection (3)*, the liquidator shall as soon as practicable notify such creditors and contributories of the company as have been notified to the liquidator or become known to the liquidator.

(5) On the hearing of an application under this section, the Director and the applicant for the disqualification order and, where the latter is a liquidator referred to in *subsection (4)*, any creditor or contributory of the company concerned, may appear and give evidence.

(6) A liquidator who fails to comply with *subsection (4)* shall be guilty of a category 3 offence.

Disqualification of restricted person following subsequent winding up.

[848]. (1) This section applies where -

(a) a restricted person is or becomes a director of a company that commences to be wound up within the period of 5 years after the date of commencement of the winding up of the company whose insolvency caused that person to be a restricted person; and

(b) it appears to the liquidator of the first-mentioned company that that company is, at the date of commencement of its winding up or at any time during the course of its winding up, unable to pay its debts.

(2) In any case to which this section applies, the liquidator shall report the matters set out in *subsection (1)* to the court, and the court, if it considers that it is proper to do so, may make a disqualification order against the restricted person for such period as it thinks fit.

(3) If the liquidator fails to comply with *subsection (2)*, he or she shall be guilty of a category 3 offence.

(4) In this section –

(a) “restricted person” has the same meaning as it has in *Chapter 3*;

(b) references to a company (other than the company whose insolvency caused the person concerned to be a restricted person) are references to any company within the meaning of *section [819](6)*.

Chapter 5

Disqualification and restriction undertakings

Definitions (*Chapter 5*).

[849]. In this Chapter -

“disqualification” means being disqualified from being appointed or acting as a director or other officer, receiver, statutory auditor, liquidator or examiner or being in any way, whether directly or indirectly, concerned or taking part in the promotion, formation or management of each of the following :

(a) any company within the meaning of *section [819](6)*;

(b) any friendly society within the meaning of the Friendly Societies Acts 1896 to [\[19772014\]](#)⁴⁴³;

(c) any society registered under the Industrial and Provident Societies Acts 1893 to [\[19782014\]](#)⁴⁴⁴;

“disqualification acceptance document” means the document provided for by regulations under *section [854](1)* and referred to in *paragraph(a)(i)* of that provision;

“disqualification order” means an order made under *section [842]*;

“disqualification undertaking”, in relation to a person, means an undertaking by the person, given by the means provided in this Chapter, by which the person submits himself or herself to be subject to disqualification;

“restriction” means being restricted for a period of 5 years from being appointed or acting in any way, directly or indirectly, as a director or secretary of a company (within the meaning of *section [819](6)*) or being concerned in or taking part in the promotion or formation of a company (within that meaning) unless the company meets the requirements set out in *section*

⁴⁴³ [Substituted by point 79 of Seanad Report Amendments.](#)

[819](3);

“restriction acceptance document” means the document provided for by regulations under *section [854](1)* and referred to in *paragraph(a)(ii)* of that provision;

“restriction declaration” means a declaration made under *section [819]*;

“restriction undertaking”, in relation to a person, means an undertaking by the person, given by the means provided in this Chapter, by which the person submits himself or herself to be subject to restriction.

Disqualification undertaking – initiation of procedure that provides person opportunity to submit to disqualification.

[850]. (1) In this section –

“disqualification period” shall be read in accordance with *subsection (3)(b)*;

“notice period” shall be read in accordance with *subsection (3)(d)*;

“person” shall be read in accordance with *subsection (2)*;

“specified date” shall be read in accordance with *subsection (3)(c)*;

“underlying facts and circumstances” shall be read in accordance with *subsection (3)(a)*

(2) Subject to *section [851](6)*, where the Director has reasonable grounds for believing that one or more of the circumstances specified in *section [842](a)* to (i) applies to a person (in this section referred to as the “person”), the Director may, in his or her discretion, deliver to the person, or to the person’s duly authorised agent, the following notice.

(3) That notice is a notice in the prescribed form stating -

(a) both –

(i) which of the circumstances specified in *section [842](a)* to (i) the Director believes apply to the person;

and

(ii) particulars of the facts and allegations that have given rise to that belief,

and the circumstances so stated, and the facts and allegations that have given rise to that belief (and of which particulars are so stated), are referred to together in this section as the “underlying facts and circumstances”;

(b) the period of disqualification (referred to in this section as the “disqualification period”) which, in the Director’s opinion, is warranted in relation to the person by the underlying facts and circumstances;

(c) the date (referred to in this section as the “specified date”) that will, subject to *subsection (5)*, be the date of commencement of the disqualification period, if a disqualification undertaking is given by the person;

(d) that during –

(i) such period as may be specified in the notice (referred to in this section as the “notice period”), being a period beginning on a day falling not less than 21 days after the date of the notice and expressed to end immediately before the specified date; or

(ii) in the event of a request under *subsection (5)* by the person being acceded to, the notice period as

⁴⁴⁴ [Substituted by point 80 of Seanad Report Amendments.](#)

extended in pursuance of that subsection,

the person may -

(I) notify the Director, in the prescribed form, of his or her willingness to give a disqualification undertaking for the disqualification period; and

(II) return to the Director the disqualification acceptance document duly signed;

(e) that during the notice period, or that period as so extended, the Director will refrain from making an application in respect of the person under *section [842]* arising from or in connection with the underlying facts and circumstances;

(f) that if the person, within the notice period or that period as so extended, does the things referred to in *paragraph (d)(I) and (II)*, the Director shall not, after the expiry of that period, make an application in respect of the person under *section [842]* arising from or in connection with the underlying facts and circumstances.

(4) That notice shall also state -

(a) that the person may make a request, under *subsection (5)*, for an extension of the notice period;

(b) the legal effect (for the person) of giving a disqualification undertaking for the disqualification period beginning on the specified date; and

(c) that if the person gives a disqualification undertaking -

(i) the person may seek to be relieved (whether in whole or in part) from the undertaking only by applying to the court under *section [847]*; and

(ii) that, on the making of such an application, the court may grant such relief only if it considers it just and equitable to do so, and then only on the terms and conditions as it sees fit.

(5) Where a notice is delivered under *subsection (2)*, the Director may, at any time before the specified date, on the request of the person, where the Director considers it appropriate to do so for the purposes of extending the notice period (and postponing the commencement of the proposed disqualification period in consequence), substitute a later date for the specified date and, where such a date is so substituted, references in *section [851]* -

(a) to the notice period shall be read as references to the notice period as extended in pursuance of this subsection; and

(b) to the specified date shall be read as references to the date that has been substituted for it in pursuance of this subsection.

Effect of delivery of notice under *section [850]*, giving of disqualification undertaking on foot thereof and related matters.

[851]. (1) Where a notice is delivered under *section [850](2)*, the Director and every person who is aware of the notice shall not, during the notice period, make an application under *section [842]*, arising from or in connection with the underlying facts and circumstances, in respect of the person who is the subject of the notice.

(2) *Subsections (3) to (5)* apply where a person, the subject of a notice delivered under *section [850](2)*, has, within the notice period -

(a) notified the Director, in the prescribed manner, of his or her willingness to give a disqualification undertaking for the

disqualification period; and

(b) returned to the Director the disqualification acceptance document duly signed.

(3) The Director shall, as soon as practicable -

(a) cause the Registrar to be furnished with the prescribed particulars of the disqualification undertaking at such time and in such form and manner as may be prescribed, and the Registrar shall enter the prescribed particulars in the register of persons kept under *section [864]*; and

(b) notify the person of the prescribed particulars of the disqualification undertaking furnished to the Registrar and provide the person with a copy of the disqualification acceptance document executed by or on behalf of the Director.

(4) After the expiry of the notice period, neither the Director nor any other person shall make an application under *section [842]*, arising from or in connection with the underlying facts and circumstances, in respect of the person who has given the disqualification undertaking.

(5) For the duration of the disqualification period beginning on the specified date, the person who has given the disqualification undertaking -

(a) shall not be appointed or act as a director or other officer, statutory auditor, receiver, liquidator or examiner or be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of each of the following :

(i) any company within the meaning of *section [819](6)*;

(ii) any friendly society within the meaning of the Friendly Societies Acts 1896 to [\[49772014\]](#)⁴⁴⁵;

(iii) any society registered under the Industrial and Provident Societies Acts 1893 to [\[49782014\]](#)⁴⁴⁶;

and

(b) shall be deemed, for the purposes of this Act, to be subject to a disqualification order.

(6) The Director shall not exercise his or her power under *section [850](2)* in relation to a person where -

(a) in the Director's opinion, a period of disqualification, in relation to the person, that is longer than 5 years is warranted by the underlying facts and circumstances; or

(b) the Director is aware that an application under *section [842]* has already been made in respect of the person arising from or in connection with the underlying facts and circumstances.

(7) Where the person who has given the disqualification undertaking (the "immediate undertaking") is already disqualified by virtue of an earlier disqualification undertaking or disqualification order, the period specified in the immediate undertaking shall run concurrently with the remaining period for which the person is already subject to disqualification.

(8) In this section -

(a) without prejudice to *section [850](5)*, "specified date" and "notice period" are to be read in accordance with *section [850](3)(c)* and *(d)*, respectively;

⁴⁴⁵ [Substituted by point 81 of Seanad Report Amendments.](#)

(b) “person”, “underlying facts and circumstances” and “disqualification period” are to be read in accordance with *section [850](2), (3)(a) and (3)(b)*, respectively.

Restriction undertaking – initiation of procedure that provides person opportunity to submit to restriction.

[852]. (1) In this section –

“notice period” shall be read in accordance with *subsection (3)(c)*;

“person” shall be read in accordance with *subsection (2)*;

“restriction period” means the period of 5 years, as mentioned in the definition of “restriction” in *section [849]*, for which the restrictions set out in that definition are to operate;

“specified date” shall be read in accordance with *subsection (3)(b)*;

“underlying facts and circumstances” shall be read in accordance with *subsection (3)(a)*.

(2) Subject to *section [853](6)*, where the Director has reasonable grounds for believing that a person falls within the description of the second-mentioned person in *section [819](1)*, namely a person who was a director of an insolvent company within the meaning of *Chapter 3* (in this section referred to as the “person”), the Director may, in his or her discretion, deliver to the person, or to the person’s duly authorised agent, the following notice.

(3) That notice is a notice in the prescribed form stating –

(a) the circumstances, facts and allegations that have given rise to that belief of the Director, citing the provisions of *section [819](1)* and *section [818](1)* (and also, where appropriate, *section [824]*) and stating particulars of those facts and allegations (and the circumstances so stated, and those facts and allegations, of which particulars are so stated, are referred to together in this section as the “underlying facts and circumstances”);

(b) the date (referred to in this section as the “specified date”) that will, subject to *subsection (5)*, be the date of commencement of the restriction period, if a restriction undertaking is given by the person;

(c) that during –

(i) such period as may be specified in the notice (referred to in this section as the “notice period”), being a period beginning on a day falling not less than 21 days after the date of the notice and expressed to end immediately before the specified date; or

(ii) in the event of a request under *subsection (5)* by the person being acceded to, the notice period as extended under that subsection,

the person may -

(I) notify the Director, in the prescribed form, of his or her willingness to give a restriction undertaking; and

(II) return to the Director the restriction acceptance document duly signed;

⁴⁴⁶ [Substituted by point 82 of Seanad Report Amendments.](#)

(d) that during the notice period, or that period as so extended, the Director will refrain from making an application in respect of the person under *section [819]* arising from or in connection with the underlying facts and circumstances;

(e) that if the person, within the notice period or that period as so extended, does the things referred to in *paragraph (c)(I) and (II)*, the Director shall not, after the expiry of that period, make an application in respect of the person under *section [819]* arising from or in connection with the underlying facts and circumstances.

(4) That notice shall also state -

(a) that the person may make a request, under *subsection (5)*, for an extension of the notice period;

(b) the legal effect (for the person) of giving a restriction undertaking beginning on the specified date; and

(c) that if the person gives a restriction undertaking –

(i) the person may seek to be relieved (whether in whole or in part) from the undertaking only by applying to the court under *section [822]*; and

(ii) that, on the making of such an application, the court may grant such relief only if it considers it just and equitable to do so, and then only on the terms and conditions as it sees fit.

(5) Where a notice is delivered under *subsection (2)*, the Director may, at any time before the specified date, on the request of the person, where the Director considers it appropriate to do so for the purposes of extending the notice period (and postponing the commencement of the restriction period in consequence), substitute a later date for the specified date and, where such a date is so substituted, references in *section [853]* –

(a) to the notice period shall be read as references to the notice period as extended in pursuance of this subsection; and

(b) to the specified date shall be read as references to the date that has been substituted for it in pursuance of this subsection.

Effect of delivery of notice under *section [852]*, giving of restriction undertaking on foot thereof and related matters.

[853]. (1) Where a notice is delivered under *section [852](2)*, the Director and every person who is aware of the notice shall not, during the notice period, make an application under *section [819]*, arising from or in connection with the underlying facts and circumstances, in respect of the person who is the subject of the notice.

(2) *Subsections (3) to (5)* apply where a person, the subject of a notice delivered under *section [852](2)*, has, within the notice period –

(a) notified the Director, in the prescribed manner, of his or her willingness to give a restriction undertaking; and

(b) returned to the Director the restriction acceptance document duly signed.

(3) The Director shall, as soon as practicable -

(a) cause the Registrar to be furnished with the prescribed particulars of the restriction undertaking at such time and in such form and manner as may be prescribed, and the Registrar shall enter the prescribed particulars in the register of persons kept under *section [823]*; and

- (b) notify the person of the prescribed particulars of the restriction undertaking furnished to the Registrar and provide the person with a copy of the restriction acceptance document executed by or on behalf of the Director.
- (4) After the expiry of the notice period, neither the Director nor any other person shall make an application under *section [819]*, arising from or in connection with the underlying facts and circumstances, in respect of the person who has given the restriction undertaking.
- (5) For the duration of the restriction period beginning on the specified date, the person who has given the restriction undertaking -
- (a) shall not be appointed or act in any way, directly or indirectly, as a director or secretary of a company (within the meaning of *section [819](6)*) or be concerned in or take part in the promotion or formation of a company (within that meaning) unless the company meets the requirements set out in *section [819](3)*; and
 - (b) shall be deemed, for the purposes of this Act, to be subject to a restriction declaration.
- (6) The Director shall not exercise his or her power under *section [852](2)* in relation to a person where the Director is aware that an application under *section [819]* has already been made in respect of the person arising from or in connection with the underlying facts and circumstances.
- (7) Where the person who has given the restriction undertaking (the “immediate undertaking”) is already restricted by virtue of an earlier restriction undertaking or restriction declaration, the period specified in the immediate undertaking shall run concurrently with the remaining period for which the person is already subject to restriction.
- (8) In this section -
- (a) without prejudice to *section [852](5)*, “specified date” and “notice period” are to be read in accordance with *section [852](3)(b)* and *(c)*, respectively;
 - (b) “restriction period”, “person” and “underlying facts and circumstances” are to be read in accordance with *section [852](1),(2)* and *(3)(a)*, respectively.

Regulations for the purposes of sections [850] to [853].

[854]. (1) The Minister shall make regulations requiring –

- (a) that a document, in a form specified in the regulations, to be known as –
 - (i) in the case of *sections [850]* and *[851]*, a “disqualification acceptance document”; and
 - (ii) in the case of *sections [852]* and *[853]*, a “restriction acceptance document”,
 (being the document by which the person to whom a notice delivered under *section [850](2)* or *[852](2)*, as the case may be, relates signifies in writing (if such be the person’s decision) the person’s voluntary submission to disqualification or restriction, as appropriate, in accordance with this Chapter) shall be returned by the person within the relevant notice period to the Director; and
 - (b) that, on receipt of that document, the Director shall execute, or cause to be executed, on his or her part the document by the affixing of his or her seal to it.
- (2) Regulations under *subsection (1)* may contain such consequential and supplemental provisions for the purposes of those

regulations or for the purpose of giving further effect to *sections* [850] to [853] as the Minister thinks expedient, including -

- (a) provision for particular procedures to be employed by the Director in relation to the delivery of a notice under *section* [850](2) or [852](2) or any communication between the Director and the person concerned or his or her duly authorised agent consequent on the delivery of such a notice (a “post-delivery-of notice communication”); and
- (b) provision for a like privilege to legal professional privilege to attach to a post-delivery-of notice communication.

(3) This section is in addition to the powers under *section* 12(1) to prescribe anything referred to in *sections* [850] to [853] as prescribed or to be prescribed.

Chapter 6

Enforcement in relation to disqualification and restriction

Offence of contravening disqualification order or restriction.

[855]. (1) A person shall be guilty of a category 2 offence who acts, in relation to any company, in a manner or a capacity which he or she is prohibited from doing by virtue of being a person -

- (a) who is subject to a disqualification order; or
- (b) who is subject to a declaration of restriction under *section* [819].

(2) A person convicted of an offence under *subsection* (1) shall be deemed to be subject to a disqualification order from the date of the conviction unless he or she is already subject to a disqualification order at that date.

(3) Where a person convicted of an offence under *subsection* (1) was subject to a disqualification order immediately before the date of the conviction, the period for which he or she was disqualified shall be extended for -

- (a) a further period of 10 years beginning after the date of the conviction; or
- (b) such other (shorter or longer) further period as the court, on the application of the prosecutor or the defendant and having regard to all the circumstances of the case, may order.

(4) *Section* [847] shall not apply to a person convicted of an offence under *subsection* (1).

(5) In this section and the subsequent provisions of this Chapter -

- (a) a reference to a company -
 - (i) shall be read as a reference to a company within the meaning of *section* [819](6); and
 - (ii) in addition, where the context admits, shall be deemed to include a reference to any friendly society within the meaning of the Friendly Societies Acts 1896 to [19772014]⁴⁴⁷ and any society registered under the Industrial and Provident Societies Acts 1893 to [19782014]⁴⁴⁸;
- (b) for the avoidance of doubt, the employment, in relation to “disqualification order”, of the words “shall be deemed to be subject to”, followed by the employment, in relation to another occurrence of “disqualification order”, of the words “is subject to” does not limit the meaning of the latter to a case of the person’s being actually subject (as distinct from

⁴⁴⁷ [Substituted by point 83 of Seanad Report Amendments.](#)

⁴⁴⁸ [Substituted by point 84 of Seanad Report Amendments.](#)

being deemed to be subject) to a disqualification order.

(6) Likewise, the employment, in this or any subsequent provision of this Chapter, of the words “shall be deemed to be subject to” does not so limit the meaning of the words “is subject to” where employed in relation to “a declaration of restriction under *section [819]*”.

(7) If a case referred to in *subsection (1)* would also fall within *section [405]* (prohibition on acting in relation to audit while disqualification order in force), then *section [405]* applies to that case to the exclusion of this section.

Offence of acting under directions of person where directions given in contravention of this Part.

[856]. (1) A person shall be guilty of a category 2 offence if he or she, while a director, acts in accordance with the directions or instructions of another person knowing that that other person, in giving the directions or instructions, is acting in contravention of any provision of this Part.

(2) A person who is convicted of an offence under *subsection (1)* shall be deemed to be subject to a disqualification order from the date of the conviction unless he or she is already subject to a disqualification order at that date.

Period of disqualification following conviction of offence under this Chapter.

[857]. Where a person is, as a consequence of his or her conviction for an offence under *section [855](1)* or *[856](1)*, deemed to be subject to a disqualification order, he or she shall be deemed to be so subject to a disqualification order for a period of 5 years beginning after the date of such conviction or such other (shorter or longer) period as the court, on the application of the prosecutor or the defendant and having regard to the circumstances of the case, may order.

Company may recover consideration.

[858]. (1) This section applies if a person acts, in relation to a company, in a manner or a capacity which he or she is prohibited from doing by virtue of being a person who is subject to a declaration of restriction under *section [819]* or who is subject to a disqualification order made under *section [842]*.

(2) The company may recover from a person acting as described in *subsection (1)* any consideration (or an amount representing its value) given by or on behalf of the company for an act or service performed by that person while he or she was so acting.

(3) The company may recover the consideration or amount representing its value as a simple contract debt in any court of competent jurisdiction.

Person acting while disqualified or restricted liable for debts of company.

[859]. (1) This section applies if -

(a) a person acts, in relation to a company, in a manner or a capacity which he or she is prohibited from doing by virtue of being a person who is subject to a declaration of restriction under *section [819]* or who is subject to a disqualification order made under *section [842]*;

(b) the company commences to be wound up -

- (i) while he or she is acting in such a manner or capacity; or
 - (ii) within 12 months after the date of his or her so acting;
- and

(c) the company is unable to pay its debts within the meaning of *section [570]*.

(2) In any case to which this section applies, the court may, on the application of the liquidator or any creditor of the company, declare that the person referred to in *subsection (1)* shall be personally liable, without any limitation of liability, for all or part of the debts or other liabilities of the company incurred in the period during which the person was acting as described in *subsection (1)(a)*.

Person acting under directions of disqualified person liable for debts of company.

[860]. A person who is convicted, on indictment, of an offence under *section [856]* for acting in accordance with the directions or instructions of another in contravention of that section shall, if the court determines that it is just to so order and orders accordingly, be personally liable, without any limitation of liability, for so much as the court specifies of the debts or other liabilities of the company concerned incurred during the period that the person was so acting.

Relief from liability under *section [858], [859] or [860]*.

[861]. In any proceeding against a person under *section [858], [859] or [860]*, the court may, if, having regard to the circumstances of the case, it considers that it is just and equitable to do so, grant relief -

- (a) in whole or in part from the liability of that person under the section concerned; and
- (b) subject to such conditions as the court sees fit.

Court may require director to give certain information.

[862]. (1) This section applies if -

- (a) a director of a company is charged with an offence or civil proceedings are instituted against such a director; and
- (b) the charge or proceedings relate to the company or involve alleged fraud or dishonesty by the director.

(2) In any case to which this section applies, the court before which the proceedings consequent on that charge or those civil proceedings are pending may, of its own motion or at the request of any party to the proceedings and if it considers that it is appropriate to do so, require the director to lodge with the office of the court a written notice -

- (a) giving the names of all companies of which he or she is a director at the date of the notice;
- (b) giving the names of all companies of which he or she was a director in the period-
 - (i) within a period commencing not earlier than 12 months before the director was charged or the proceedings were commenced against him or her; and
 - (ii) ending at the date of the notice;
- (c) stating whether he or she is at the date of the notice or ever was subject to a disqualification order; and
- (d) giving the dates and duration of each period for which he or she was disqualified.

(3) This section applies to shadow directors as it does to directors.

Information to be supplied to Registrar.

[863]. (1) This section applies where a court -

(a) makes a disqualification order;

(b) grants or varies relief under *section [847]*; or

(c) convicts a person of -

(i) an offence that has the effect that the person is deemed to be subject to a disqualification order; or

(ii) an offence under *section [855](1)* or *[856](1)*.

(2) In any case to which this section applies, a prescribed officer of the court shall ensure that the Registrar is given the prescribed particulars of the order, relief or conviction at such time and in such form and manner as may be prescribed.

Register of disqualified persons.

[864]. (1) Subject to the provisions of this section, the Registrar shall keep a register of the particulars given to him or her under *section [863]*.

(2) Where the Registrar receives particulars of full relief under *section 848*, the Registrar shall -

(a) not enter the particulars on the register; and

(b) as soon as practicable remove from the register any existing particulars in respect of the person concerned.

(3) The Registrar shall remove from the register any particulars in respect of a person on the expiry of the period for which the person is subject to a disqualification order, unless the Registrar has received a further notification in respect of that person under *section [863](1)(a)* or *(c)*.

(4) If the person is concurrently subject to 2 or more disqualification orders and the periods to which they relate do not expire at the same time, then the reference in *subsection (3)* to removal from the register of particulars is a reference only to those particulars that relate to the disqualification order or orders the period or periods of which have expired.

(5) Nothing in this section shall prevent the Registrar from keeping the register required under this section as part of any other system of classification, whether pursuant to *section [895]* or otherwise.

Chapter 7

Provisions relating to offences generally

Summary prosecutions.

[865]. (1) Summary proceedings in relation to an offence under this Act may be brought and prosecuted by -

(a) the Director of Public Prosecutions; or

(b) the Director.

(2) Without prejudice to the generality of *subsection (1)*, summary proceedings in relation to an offence under each of the following provisions may be brought and prosecuted by the Registrar:

- (a) *section 30(8)*;
- (b) *section [137](6)*;
- (c) [*section [343](11)*]⁴⁴⁹;
- (d) *section [430](10)*, in so far as it relates to a default under *section [430](3)*;
- (e) *section [441](3)*;
- (f) *section [530](7)*;
- (g) *section [531](8),(9) or (10)*;
- (h) *section [555](2)*;
- (i) *section [592](4)*;
- (j) *section [631](4)*;
- (k) *section [651]*;
- (l) *section [669](8) or (9)*;
- (m) *section [680](9)*;
- (n) *section [681](5)*;
- (o) *section [704](6)*.

District court district within which summary proceedings may be brought.

[866]. (1) Summary proceedings against a company or an officer of a company acting in his or her capacity as such (or a person purporting to so act) for an offence under this Act may be brought, heard and determined –

- (a) before and by a judge of the District Court as provided for under section 79 or 79A of the Courts of Justice Act 1924;
- (b) before and by a judge of the District Court for the time being assigned to the district court district in which the registered office of the company is situated immediately prior to the commencement of the proceedings, or
- (c) where the offence is an offence under [*section [343](11)*]⁴⁵⁰ (but without prejudice to the alternative venues provided under the preceding paragraphs) before a judge of the District Court for the time being assigned to -
 - (i) the Dublin Metropolitan District; or
 - (ii) the district court district of which the district court area of Carlow forms part, but only to the extent, in the case of the district court district referred to in *subparagraph (ii)*, that the judge so assigned is exercising jurisdiction in the district court area of Carlow so referred to.

(2) In this section “officer of a company” includes a director, shadow director, promoter, statutory auditor, receiver, liquidator, or secretary of a company;

(3) For the purposes of this section, the place for the time being recorded by the Registrar as the situation of the registered office of the company shall be deemed to be the registered office of the company notwithstanding that the situation of its registered office may have

⁴⁴⁹ Substituted by point 124 of Seanad Committee Amendments.

changed.

Period within which summary proceedings may be commenced.

[867]. (1) Notwithstanding (in the case of category 3 or 4 offences) section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings in relation to an offence under this Act may be commenced -

- (a) at any time within 3 years after the date on which the offence was committed; or
- (b) if, at the expiry of the period referred to in *paragraph (a)*, the person against whom the proceedings are to be brought is outside the State, within 6 months after the date on which he or she next enters the State; or
- (c) at any time within 3 years after the date on which evidence that, in the opinion of the person bringing the proceedings, is sufficient to justify the bringing of the proceedings comes to that person's knowledge,

whichever is the later.

(2) For the purposes of *subsection (1)(c)*, a certificate signed by or on behalf of the person bringing the proceedings as to the date on which the evidence referred to in that provision came to his or her knowledge shall be *prima facie* evidence of that date.

(3) In any proceedings, a document purporting to be a certificate issued for the purposes of *subsection (2)* and to be signed by the person bringing the proceedings shall be -

- (a) deemed to be so signed; and
- (b) admitted as evidence without further proof of the signature or of the person purporting to sign the certificate.

Prosecution of companies on indictment.

[868]. (1) The following provisions of this section apply where a company is charged, either alone or with some other person, with an indictable offence.

(2) The company may appear, at all stages of the proceedings, by a representative and the answer to any question put to a person charged with an indictable offence may be made on behalf of the company by that representative but if the company does not so appear it shall not be necessary to put the questions and the District Court may, notwithstanding its absence, send forward the company for trial and exercise any of its other powers under Part 1A of the Criminal Procedure Act 1967, including the power to take depositions.

(3) Any right of objection or election conferred upon the accused person by any enactment may be exercised on behalf of the company by its representative.

(4) Any plea that may be entered or signed by an accused person, whether before the District Court or before the trial judge, may be entered in writing on behalf of the company by its representative, and if the company does not appear by its representative or does appear but fails to enter any such plea, the trial shall proceed as though the company had duly entered a plea of not guilty.

(5) In this section, "representative" in relation to a company means a person duly appointed by the company to represent it for the purpose of doing any act or thing which the representative of a company is authorised by this section to do.

(6) A representative of a company shall not, by virtue only of being appointed for the purpose referred to in *subsection (5)*, be

⁴⁵⁰ Substituted by point 125 of Seanad Committee Amendments.

qualified to act on behalf of the company before any court for any other purpose.

(7) A representative for the purpose of this section need not be appointed under the seal of the company.

(8) A statement in writing purporting to be signed by a managing director of the company or some other person (by whatever name called) who manages, or is one of the persons who manage, the affairs of the company, to the effect that the person named in the statement has been appointed as the representative of the company for the purposes of this section shall be admissible without further proof as evidence that that person has been so appointed.

Offences by body committed with consent of its officer.

[869]. (1) This section applies where an offence is committed by a body corporate under -

(a) *section [785]*;

[(b) *section [790]*; or

(c) *section [876].*]⁴⁵¹

(2) In any case to which this section applies, if the offence under[*section [785], [790] or [876]*]⁴⁵², as the case may be, is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any person who is a director, manager, secretary, or other officer of the body corporate, or any person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Where the affairs of a body corporate are managed by its members, *subsection (2)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager.

Further offence, where contravention continued after conviction for an offence, and penalties for such offence.

[870]. If the contravention in respect of which a person is convicted of an offence under this Act is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable -

(a) where the original contravention was a category 1 offence, whether prosecuted summarily or on indictment, on -

(i) conviction on indictment, to a fine not exceeding €5,000; or

(ii) summary conviction, to a [class D fine]⁴⁵³;

(b) where the original contravention was a category 2 offence, whether prosecuted summarily or on indictment, on -

(i) conviction on indictment, to a fine not exceeding €1,000; or

(ii) summary conviction, to a fine not exceeding €100;

or

(c) where the original contravention was a category 3 offence or a category 4 offence, on summary conviction to a fine

⁴⁵¹ Substituted by point 184 of Report Amendments.

⁴⁵² Substituted by point 185 of Report Amendments.

⁴⁵³ Substituted by point 186 of Report Amendments.

not exceeding €50.

Categories 1 to 4 offences – penalties.

[871]. (1) A person guilty of an offence under this Act that is stated to be a category 1 offence shall be liable –

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both; or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 10 years or both.

(2) A person guilty of an offence under this Act that is stated to be a category 2 offence shall be liable –

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both; or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(3) A person guilty of an offence under this Act that is stated to be a category 3 offence shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.

(4) A person guilty of an offence under this Act that is stated to be a category 4 offence shall be liable, on summary conviction, to a class A fine.

Court may order that convicted person remedy breach.

[872]. The court in which a conviction for an offence under this Act is recorded or affirmed may order that the person convicted shall remedy the breach of this Act in respect of which that person was convicted.

Notice by Director to remedy default.

[873]. (1) The Director may deliver a notice that complies with *subsection (2)* to a person if the Director has reasonable grounds for believing that the person has committed ~~[an offence under this Act that is subject to summary prosecution: a category 3 or 4 offence.]~~⁴⁵⁴

(2) The notice referred to in *subsection (1)* is a notice that -

- (a) is in the prescribed form;
- (b) states that the person is alleged to have committed the offence;
- (c) states that the person to whom the notice is delivered may during a period of 21 days beginning after the date of the notice, or such greater period as may be specified in the notice -
 - (i) remedy as far as practicable to the satisfaction of the Director any default that constitutes the offence; and
 - (ii) pay to the Director a prescribed amount which shall be accompanied by the notice; and
- (d) states that a prosecution of the person to whom the notice is delivered-
 - (i) will not be instituted during the period referred to in *paragraph (c)*; and

⁴⁵⁴ [Substituted by point 85 of Seanad Report Amendments.](#)

- (ii) will not be instituted in any event if, within the period referred to in *paragraph (c)*, the default is remedied to the satisfaction of the Director and payment is made in accordance with the notice.

(3) Where a notice is delivered under *subsection (1)* -

- (a) a person to whom it is delivered may, during the period specified in the notice, make to the Director payment of the amount specified in the notice, accompanied by the notice;
- (b) the Director may receive the payment and issue a receipt for it and no payment so received shall in any circumstances be recoverable by the person who made it; and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and if the default is remedied to the satisfaction of the Director and payment of the amount specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted in any event.

(4) In a prosecution for an offence to which this section applies, the defendant shall bear the onus of showing that a payment pursuant to a notice under this section has been made.

(5) All payments made to the Director in pursuance of this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.

(6) If the person mentioned in *subsection (1)* is a company, then that subsection authorises the delivery of the notice mentioned in it to an officer of the company but, where the notice is delivered to that officer, the second reference in that subsection to person, and each reference in *subsections (2)* and *(3)* to the person to whom the notice is delivered or otherwise to person, is to be read as a reference to the company.

Special provisions applying where default in delivery of documents to Registrar.

[874]. (1) The Registrar may deliver a notice that complies with *subsection (2)* to a person if the Registrar has reasonable grounds for believing that the person is in default in the delivery, filing, or making to the Registrar of a return or similar document required under this Act [\[\(being a default that constitutes a category 3 or 4 offence\)\]⁴⁵⁵.](#)

(2) The notice referred to in *subsection (1)* is a notice that -

- (a) is in the prescribed form;
- (b) states that the person has failed to deliver, file or make a specified return or similar document to the Registrar under a specified provision of this Act;
- (c) states that the person to whom the notice is delivered may during a period of 21 days beginning after the date of the notice, or such greater period as may be specified in the notice -
 - (i) remedy the default; and
 - (ii) pay to the Registrar a prescribed amount which shall be accompanied by the notice; and
- (d) states that a prosecution of the person to whom the notice is delivered -
 - (i) will not be instituted during the period referred to in *paragraph (c)*; and

⁴⁵⁵ [Substituted by point 86 of Seanad Report Amendments.](#)

- (ii) will not be instituted in any event if, within the period referred to in *paragraph (c)*, the default is remedied and payment is made in accordance with the notice.

(3) Where a notice is delivered under *subsection (1)* -

- (a) a person to whom it is delivered may, during the period specified in the notice, make to the Registrar payment of the amount specified in the notice, accompanied by the notice;
- (b) the Registrar may receive the payment and issue a receipt for it and no payment so received shall in any circumstances be recoverable by the person who made it; and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and if the default is remedied to the satisfaction of the Registrar and payment of the amount specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted in any event.

(4) In a prosecution for an offence to which this section applies, the defendant shall bear the onus of showing that a payment pursuant to a notice under this section has been made.

(5) All payments made to the Registrar in pursuance of this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.

(6) If the person mentioned in *subsection (1)* is a company, then that subsection authorises the delivery of the notice mentioned in it to an officer of the company but, where the notice is delivered to that officer, the second reference in that subsection to person, and each reference in *subsections (2) and (3)* to the person to whom the notice is delivered or otherwise to person, is to be read as a reference to the company.

Chapter 8

Additional general offences

[Civil enforcement of prohibition on trading under misleading name]

[875]. (1) On the application of the Registrar or the Director, the court may order that a person shall cease, within the time specified in the order, to carry on any trade, profession or business in contravention of *section 27(1)* if that person has—

- (a) been convicted of an offence under *section 27(2)*;
- (b) been served with a notice by the Registrar or Director requiring that person to cease to carry on a trade, profession or business in contravention of *section 27(1)*; and
- (c) failed to comply with the notice within 14 days after the date of service of the notice, or such greater period as may be specified in the notice in that behalf.

(2) In making an order under *subsection (1)* the court may order that all costs of and incidental to the application shall be borne by the person against whom the order is made.]⁴⁵⁶

⁴⁵⁶ Substitution by point 107 of Committee Amendments.

Offence of providing false information.

[876]. (1) A person shall be guilty of a category 2 offence if that person -

- (a) in purported compliance with a provision of this Act, answers a question, provides an explanation, makes a statement or completes, signs, produces, lodges or delivers any return, report, certificate, balance sheet or other document that is false in a material particular; and
- (b) knows that it is false in a material particular or is reckless as to whether it is or not,

but this subsection is subject to *subsection (3)* which provides for greater maximum penalties in certain cases.

(2) A person shall be guilty of a category 2 offence if -

- (a) the person provides false information to an electronic filing agent knowing it to be false or being reckless as to whether it is so; and
- (b) that information is subsequently transmitted in a return made, on that person's behalf, to the Registrar.

but this subsection is subject to *subsection (3)* which provides for greater maximum penalties in certain cases.

(3) Where a person is convicted on indictment of an offence under *subsection (1)* or *(2)* and the court is of the opinion that any act, omission or conduct which constituted that offence has -

- (a) substantially contributed to a company being unable to pay its debts;
- (b) prevented or seriously impeded the orderly winding up of a company; or
- (c) substantially facilitated the defrauding of the creditors of a company or creditors of any other person,

then, notwithstanding that it is a category⁴⁵⁷ 2 offence of which he or she has been convicted, the maximum term of imprisonment and the maximum amount of fine to which the person shall be liable for the offence shall be that as provided for in *section [871](1)(b)* in relation to a category 1 offence.

Offence of destruction, mutilation or falsification of book or document.

[877]. (1) Subject to *subsection (2)*, an officer of a company shall be guilty of a category 2 offence who -

- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification, of any book or document affecting or relating to the property or affairs of the company; or
- (b) makes or is a party to the making of a false entry in any [such book or]⁴⁵⁸ document.

(2) In any proceedings against a person in respect of an offence under *subsection (1)*, it shall be a defence to prove that, in carrying out the destruction, mutilation or other act concerned, the person had no intention to defeat the process of the law and, in particular, the enforcement of this Act.

Offence of fraudulently parting with, altering or making omission in book or document.

[878]. An officer of a company shall be guilty of a category 2 offence who -

⁴⁵⁷ Deleted by point 126 of Seanad Committee Amendments.

- (a) fraudulently parts with, alters, or makes an omission in any book or document affecting or relating to the property or affairs of the company; or
- (b) is a party to the fraudulent parting with, fraudulent altering or fraudulent making of an omission in any such book or document.

Chapter 9

Evidential matters

Proof of certificate as to overseas incorporation.

[879]. (1) This section applies where in any proceedings under, or for any other purpose of, this Part or *Parts 1 to 13* or *Part 15*, the existence of a body corporate or undertaking outside the State is alleged or is otherwise in issue.

(2) In *subsection (3)* “relevant certificate” means a certificate that -

- (a) is signed by any person purporting to hold the office of registrar of companies or assistant registrar of companies or any similar office in any country prescribed for the purposes of this section; and
- (b) certifies that the body corporate or undertaking named in the certificate has been incorporated or registered in that country.

(3) A relevant certificate shall be *prima facie* evidence of the incorporation or registration of the named body corporate or undertaking in the country concerned without proof of the signature of the person signing the certificate and without proof that the person signing the certificate holds the office purported to be held.

Proof of incorporation under overseas legislation.

[880]. (1) This section applies where in any proceedings under, or [for]⁴⁵⁹the purposes of, this Part or *Parts 1 to 13* or *Part 15* the incorporation, by virtue of any Act passed in any country, not being the State, of a corporation is alleged or is otherwise in issue.

(2) A copy of any Act by which a corporation is incorporated purporting -

- (a) to be passed in any country prescribed for the purposes of this section; and
- (b) to be published by the Government publishers of that country,

shall, without further proof, be *prima facie* evidence of the incorporation of the corporation.

Admissibility in evidence of certain matters.

[881]. (1) Where an answer is given by an individual to a question put to that individual in the exercise of powers conferred by any of the provisions specified in *subsection (2)*, that answer -

- (a) may be used in evidence against that individual in any civil proceedings;

⁴⁵⁸ Substituted by point 187 of Report Amendments.

- (b) shall not be used in evidence against that individual in any criminal proceedings except a prosecution for perjury in respect of an answer given.

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

- (a) *sections [753] to [757]*;
- (b) *sections [753], [756] and [757] as applied by section [765]*;
- (c) rules made in respect of the winding up of companies (whether by the court or voluntarily) by the rule making authority referred to in *section [564]*.

(3) A statement required by *section [593]* -

- (a) may be used in evidence, in any civil proceedings, against any individual who makes or concurs in the making of the statement;
- (b) shall not be used in evidence against that individual in any criminal proceedings except a prosecution for perjury in respect of any matter contained in the statement.

(4) A document purporting to be a copy of a report of an inspector appointed under *Part 13* shall be admissible in any civil proceedings as evidence -

- (a) of the facts set out in it without further proof, unless the contrary is shown; and
- (b) of the opinion of the inspector in relation to any matter contained in the report.

Provision of information to juries.

[882]. (1) In a trial on indictment of an offence under this Act, the trial judge may order that copies of all or any of the following documents be given to the jury in any form that the judge considers appropriate:

- (a) any document admitted in evidence at the trial;
- (b) the transcript of the opening speeches of counsel;
- (c) any charts, diagrams, graphics, schedules or summaries of evidence produced at trial;
- (d) the transcript of the whole or part of the evidence given at the trial;
- (e) the transcript of the trial judge's charge to the jury;
- (f) any other document that in the opinion of the trial judge would assist the jury in its deliberations including, where appropriate, an affidavit by an accountant summarising, in a form that is likely to be comprehended by the jury, any transactions by the accused or other persons relevant to the offence.

(2) If the prosecutor proposes to apply to the trial judge for an order that a document referred to in *subsection (1)(f)* shall be given to the jury, the prosecutor shall give a copy of the document to the accused in advance of the trial and, on the hearing of the application, the trial judge shall take into account any representations made by or on behalf of the accused in relation to it.

(3) Where the trial judge has made an order that an affidavit referred to in *subsection (1)(f)* shall be given to the jury, the judge may in an appropriate case, with a view to assisting the jury in its deliberations, require the accountant who prepared the affidavit to explain to

⁴⁵⁹ Inserted by point 108 of Committee Amendments.

the jury any relevant accounting procedures or principles.

Certificate evidence.

[883]. (1) In any legal proceedings (including proceedings relating to an offence), a certificate signed by an appropriate officer in the course of performing his or her functions is, in the absence of evidence to the contrary, proof of the following:

- (a) if it certifies that the officer has examined the relevant records and that it appears from them that during a stated period an item was not received from a stated person, proof that the person did not during that period provide the item and that the item was not received;
- (b) if it certifies that the officer has examined the relevant records and that it appears from them that a stated notice was not issued to a stated person, proof that the person did not receive the notice;
- (c) if it certifies that the officer has examined the relevant records and that it appears from them that a stated notice was duly given to a stated person on a stated date, proof that the person received the notice on that date;
- (d) if it certifies that the officer has examined the relevant records and that it appears from them that a stated notice was posted to a stated person at a stated address on a stated date, proof that the notice was received by that person at that address on a date 3 days after the date on which the document was posted;
- (e) if it certifies that the officer has examined the relevant records and that it appears from them that a document was filed or registered with or delivered at a stated place, on a stated date or at a stated time, proof that the document was filed or registered with or delivered at that place, on that date or at that time.

(2) A certificate referred to in [subsection (1)]⁴⁶⁰ that purports to be signed by an appropriate officer is admissible in evidence in any legal proceedings without proof of the officer's signature or that the officer was the proper person to sign the certificate.

(3) In this section -

“appropriate officer” means-

- (a) in respect of functions that, under this Act, are to be performed by the Minister, the Minister or an officer of the Minister;
- (b) in respect of functions that, under this Act, are to be performed by the Director, the Director or an officer of the Director;
- (c) in respect of functions that, under this Act, are to be performed by the inspector or inspectors appointed under *Part 13*, an inspector or, where more than one inspector is appointed, any inspector;
- (d) in respect of functions that, under this Act, are to be performed by the Registrar, an assistant registrar or any other person authorised by the Minister under section [887](9);
- (e) in respect of functions that, under this Act, are to be performed by the Central Bank –
 - (i) the Head of Financial Regulation (within the meaning given by the Central Bank Act 1942); or
 - (ii) a person appointed by some other person to whom the Head of Financial Regulation has delegated

⁴⁶⁰ Substituted by point 188 of Report Amendments.

responsibility for appointing persons for the purposes of this section;

“item” includes a document and any other thing;

“notice” includes -

- (a) any request, notice, letter, demand or other document; and
- (b) any form of obligation that an individual may have under this Act by reason of a demand or request made by an appropriate officer, whether communicated in writing, orally or by other means.

Documentary evidence.

[884]. (1) A document prepared pursuant to any provision of this Act and purporting to be signed by any person is deemed, in the absence of evidence to the contrary, to have been signed by that person.

(2) A document submitted under this Act on behalf of any person is deemed to have been submitted by that person unless that person proves that it was submitted without that person’s consent or knowledge.

(3) A document that purports to be a copy of, or an extract from, any document kept by or on behalf of the Director and that purports to be certified by the Director, an officer of the Director or any person authorised by the Director to be a true copy of or extract from the original document is, without proof of the official position of the person certifying the document, admissible in evidence in all legal proceedings and of the same evidential effect as the original document.

(4) A document that purports to be a copy of, or an extract from, any document kept by the Minister and that purports to be certified by the Minister, an officer of the Minister or any person authorised by the Minister to be a true copy of or extract from the original document is, without proof of the official position of the person certifying the document, admissible in evidence in all legal proceedings and of the same evidential effect as the original document.

(5) A document that purports to be a copy of, or an extract from, any document kept by an inspector and that purports to be certified by the inspector or any person authorised by the inspector to be a true copy of or extract from the original document is, without proof of the official position of the person certifying the document, admissible in evidence in all legal proceedings and of the same evidential effect as the original document.

(6) A document that purports to be a copy of, or an extract from, any document kept by the Central Bank and certified by –

- (a) the Head of Financial Regulation (within the meaning given by the Central Bank Act 1942); or
- (b) a person authorised by the Head of Financial Regulation,

to be a true copy of or extract from the original document is, without proof of the official position of the person certifying the document, admissible in evidence in all legal proceedings and of the same evidential effect as the original document.

(7) For the purposes of this Act, a document that purports to have been created by a person is deemed, in the absence of evidence to the contrary, to have been created by that person, and any statement contained in the document is presumed to have been made by that person unless the document expressly attributes its making to some other person.

(8) This section, and in particular *subsection (1)*, is in addition to, and does not derogate from, any other provision of this Act that

provides for the receiving in evidence of a particular document and, in particular, its being received in evidence without proof of the signature of the person who purported to sign it, or that he or she possessed or held the capacity or position concerned.

Saving for privileged communications in context of requirements under section [724].

[885]. Where proceedings are brought under this Act against any person, nothing in [section [447] or [724]]⁴⁶¹ shall be taken to require any person who has acted as solicitor for the company to disclose any privileged communication made to him or her in that capacity.

Statutory declaration made in foreign place

[886]. (1) A statutory declaration made in a foreign place (in pursuance of, or for the purposes of this Act) shall be deemed to have been validly made (in pursuance of, or for the purposes of, this Act) if -

- (a) it is made in that place before a person entitled under the Solicitors Act 1954 to practise as a solicitor in the State;
or
- (b) it is made before a person authorised under the law of that place to administer oaths in that place and *subsection (3), (4) or (5)*, whichever applies, is complied with.

(2) *Subsection (1)* is -

- (a) without prejudice to the circumstances set out in the Statutory Declarations Act 1938 in which a statutory declaration may be made; and
- (b) in addition to, and not in substitution for, the circumstances provided under the Diplomatic and Consular Officers (Provision of Services) Act 1993 or any other enactment in which a statutory declaration made by a person outside the State is regarded as a statutory declaration validly made (whether for purposes generally or any specific purpose).

(3) In a case falling within *subsection (1)(b)*, and if the foreign place in question is situate in a state that is a contracting party to the EC Convention, then (unless that Convention does not extend to that particular place), the provisions of the EC Convention with regard to authentication shall apply in relation to the statutory declaration concerned, including the procedures for verification of any matter in circumstances where serious doubts, with good reason, arise in respect of that matter.

(4) In a case falling within *subsection (1)(b)*, and if the foreign place in question is situate in a state that is a contracting party to the Hague Convention but is not a contracting party to the EC Convention, then (unless the Hague Convention does not extend to that particular place), the provisions of the Hague Convention with regard to authentication shall apply in relation to the statutory declaration concerned, including the procedures for verification of any matter in circumstances where serious doubts, with good reason, arise in respect of that matter.

(5) In a case falling within *subsection (1)(b)* to which neither *subsection (3)* nor *(4)* applies, the following shall be authenticated in accordance with the law of the foreign place in question:

⁴⁶¹ Substituted by point 189 of Report Amendments.

- (a) the signature of the person making the declaration (the “declarer”); and
- (b) to the extent that that law requires either or both of the following to be authenticated -
 - (i) the capacity in which the declarer has acted in making the declaration;
 - (ii) the seal or stamp of the person who has administered the oath to the declarer.

(6) The Registrar may, in respect of a statutory declaration that purports to have been authenticated in the manner specified in *subsection (5)* and to be made in pursuance of or for the purposes of this Act, require such proof as the Registrar considers appropriate of any particular requirements of the law referred to in *subsection (5)*.

(7) In this section -

“EC Convention” means the Convention Abolishing the Legalisation of Documents in the Member States of the European Communities of 25 May 1987;

“foreign place” means a place outside the State;

“Hague Convention” means the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents done at the Hague on 5 October 1961;

“statutory declaration”, in addition to the meaning assigned to it by the Interpretation Act 2005, means a declaration that conforms with the requirements of the Statutory Declarations Act 1938, except for any requirements contained in section 1 of that Act or any other provision of it, expressly or impliedly limiting -

- (a) the class of persons who may take and receive a declaration; or
- (b) the places in which a declaration may be taken or received.

(8) A statutory declaration made -

- (a) before 24 December 2006;
- (b) in a place outside the State;
- (c) before-

(i) if the place is not a place in England and Wales, Northern Ireland or Scotland, a person authorised under the law of that place to administer oaths or a person entitled under the Solicitors Act 1954 to practise as a solicitor in the State; or

(ii) if the place is a place in England and Wales, Northern Ireland or Scotland -

(I) a person entitled under the law of England and Wales, Northern Ireland or Scotland, as the case may be, to practise as a solicitor in England and Wales, Northern Ireland or Scotland, as the case may be, or to administer oaths there; or

(II) a person entitled under the Solicitors Act 1954 to practise as a solicitor in the State;

and

(d) purporting to be made in pursuance of or for the purposes of the Companies Acts (being

the collective citation, with respect to enactments concerning companies, as stood provided, for the time being, by statute),

shall, if the declaration was delivered to the Registrar before 24 December 2006, be valid and deemed always to have been valid notwithstanding anything in the Diplomatic and Consular Officers (Provision of Services) Act 1993 or any other enactment and anything done on foot of that declaration's delivery to the Registrar, including any subsequent registration of that declaration by the Registrar, shall be valid and be deemed always to have been valid notwithstanding anything in that Act or any other enactment.

(9) Nothing in *subsection (8)* affects any proceedings commenced before 24 December 2006.