



Number 28 of 2001

COMPANY LAW ENFORCEMENT ACT, 2001

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation and construction.
2. Commencement.
3. Interpretation.
4. Regulations.
5. Laying of regulations and orders before Houses of the Oireachtas and power to revoke or amend orders.
6. Expenses of Minister.

PART 2

DIRECTOR OF CORPORATE ENFORCEMENT

Director

7. Director of Corporate Enforcement.
8. Terms and conditions of appointment of Director.
9. Superannuation.
10. Removal, disqualification or cessation of Director.

Acting Director

11. Acting Director of Corporate Enforcement.

Section

36. Amendment of section 92 of Act of 1990 — Duty of relevant authority to report to Director.
37. Amendment of section 115 of Act of 1990.
38. Amendment of section 118 of Act of 1990.
39. Amendment of section 230 of Act of 1990.

PART 4

RESTRICTIONS AND DISQUALIFICATIONS

40. New section 183A of Act of 1963 — Examination as to solvency status.
41. Amendment of section 150 of Act of 1990.
42. Amendment of section 160 of Act of 1990.

PART 5

WINDING-UP AND INSOLVENCY

43. Amendment of section 243 of Act of 1963 — Inspection of books by creditors, contributories and Director.
44. Amendment of section 245 of Act of 1963.
45. Amendment of section 245A of Act of 1963.
46. Repeal and substitution of section 247 of Act of 1963 — Power to arrest absconding contributory or officer of company.
47. Amendment of section 267 of Act of 1963.
48. Amendment of section 278 of Act of 1963.
49. New sections 282A to 282D of Act of 1963.
50. Amendment of section 298 of Act of 1963.
51. Amendment of section 299 of Act of 1963.
52. Amendment of section 319 of Act of 1963.
53. New section 323A of Act of 1963 — Director may request production of receiver's books.
54. Amendment of section 251 of Act of 1990.
55. Order to restrain directors and others from moving assets.
56. Liquidator to report on conduct of directors.
57. Director's power to examine liquidator's books.
58. Reporting to Director of misconduct by liquidators or receivers.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

PART 6

MEASURES TO IMPROVE COMPLIANCE WITH FILING OBLIGATIONS

Section

59. Repeal of sections 125 and 126 of Act of 1963 and substitution of section 125 — Annual return.
60. Repeal and substitution of section 127 of Act of 1963 — Annual return date.
61. Amendment of section 153 of Act of 1963 — Financial year and annual return date of holding company and subsidiary.
62. Amendment of section 370 of Act of 1963.
63. Amendment of section 395 of Act of 1963 and repeal of Fifth Schedule.
64. Amendment of section 7 of Companies (Amendment) Act, 1986.
65. Amendment of section 17(1) of Companies (Amendment) Act, 1986.
66. Special provisions applying where default in delivery of documents to registrar of companies.

PART 7

COMPANY LAW REVIEW GROUP

67. Establishment of Company Law Review Group.
68. Functions of Review Group.
69. Membership of Review Group.
70. Meetings and business of Review Group.
71. Annual Report and provision of information to Minister.

PART 8

AUDITORS

72. Amendment of section 187 of Act of 1990.
73. Amendment of section 192 of Act of 1990.
74. Amendment of section 194 of Act of 1990 — Duty of auditors if proper books of account not being kept or other offences suspected.

PART 9

TRANSACTIONS INVOLVING DIRECTORS

75. Amendment of section 25 of Act of 1990.
76. Amendment of section 26 of Act of 1990.

Section

77. Amendment of section 33 of Act of 1990.
78. Repeal and substitution of section 34 of Act of 1990 —
Exceptions to section 31 in certain circumstances.
79. Amendment of section 35 of Act of 1990 — Inter-company
transactions in the same group.

PART 10

MISCELLANEOUS

80. Reference Memoranda and Articles of Association.
81. Amendment of section 7 of Act of 1963.
82. Amendment of section 14 of Act of 1963.
83. Amendment of section 17 of Act of 1963.
84. Amendment of section 2 of Act of 1963.
85. Amendment of section 10 of Act of 1963.
86. Amendment of section 21 of Act of 1963.
87. Amendment of section 23 of Act of 1963.
88. Repeal and substitution of section 24 of Act of 1963.
89. Amendment of section 60 of Act of 1963.
90. Amendment of section 158 of Act of 1963.
91. Amendment of section 195 of Act of 1963.
92. Amendment of section 201 of Act of 1963.
93. Amendment of section 213 of Act of 1963.
94. Amendment of section 215 of Act of 1963.
95. Amendment of section 334 of Act of 1963.
96. Amendment of section 371 of Act of 1963.
97. New section 371A of Act of 1963 — Power to compel compliance with requirement made under section 19(3)(b) of Act of 1990.
98. Repeal and substitution of section 381 of Act of 1963 —
Improper use of “limited” or “teoranta”.
99. Amendment of section 392 of Act of 1963.
100. Repeal and substitution of section 383 of Act of 1963.
101. New section 3A of Companies (Amendment) Act, 1982 —
Additional statement to be delivered to registrar.
102. Amendment of section 30 of Act of 1990.
103. Amendment of section 110 of Act of 1990.
104. Amendment of section 240 of Act of 1990.
105. New section 240A of Act of 1990 — Court in which proceedings for certain offences may be brought.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Section

106. Amendment of section 242 of Act of 1990.
107. New section 249A of Act of 1990 — Power to reject documents sent for registration and amendments consequential on that section's insertion.
108. Amendment of section 258 of Act of 1990.
109. Notice by Director of intention to prosecute.
110. Provision of information to juries.
111. Non-application of certain provisions concerning acquisition by subsidiary of shares in its holding company.
112. Amendment of Freedom of Information Act, 1997.
113. Amendment of section 7A of Bankers' Books Evidence Act, 1879.
114. Amendment of section 9 of Consumer Information Act, 1978.

SCHEDULE

TRANSFER OF FUNCTIONS FROM MINISTER TO DIRECTOR

ACTS REFERRED TO

Bankers' Books Evidence Act, 1879	43 & 44 Vict., c. 11
Central Bank Act, 1989	1989, No. 16
Civil Service Commissioners Act, 1956	1956, No. 45
Civil Service Regulation Act, 1956	1956, No. 46
Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997	1997, No. 17
Companies Act, 1963	1963, No. 33
Companies Act, 1990	1990, No. 33
Companies Acts, 1963 to 1999	
Companies (Amendment) Act, 1982	1982, No. 10
Companies (Amendment) Act, 1986	1986, No. 25
Consumer Credit Act, 1995	1995, No. 24
Consumer Information Act, 1978	1978, No. 1
Courts Act, 1971	1971, No. 36
European Communities Act, 1972	1972, No. 27
European Parliament Elections Act, 1997	1997, No. 2
Freedom of Information Act, 1997	1997, No. 13
Insurance Acts, 1909 to 2000	
Irish Takeover Panel Act, 1997	1997, No. 5
Partnership Act, 1890	53 & 54 Vict., c. 93
Stock Exchange Act, 1995	1995, No. 9
Taxes Consolidation Act, 1997	1997, No. 39



Number 28 of 2001

COMPANY LAW ENFORCEMENT ACT, 2001

AN ACT TO ESTABLISH A DIRECTOR OF CORPORATE ENFORCEMENT AND PROVIDE FOR HIS OR HER APPOINTMENT, TERMS AND CONDITIONS AND FUNCTIONS, TO PROVIDE FOR AN ACTING DIRECTOR TO PERFORM THE FUNCTIONS OF THE DIRECTOR DURING EXIGENCIES, TO TRANSFER EXISTING FUNCTIONS OF THE MINISTER RELATING TO THE ENFORCEMENT OF THE COMPANIES ACTS TO THE DIRECTOR, TO ESTABLISH A COMPANY LAW REVIEW GROUP TO MONITOR, REVIEW AND ADVISE THE MINISTER ON MATTERS RELATING TO COMPANY LAW, TO AMEND IN VARIOUS WAYS THE COMPANIES ACT, 1963, THE COMPANIES ACT, 1990, AND VARIOUS OTHER ACTS, AND FOR RELATED PURPOSES. [9th July, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Company Law Enforcement Act, 2001. Short title,
collective citation
and construction.

(2) This Act and the Companies Acts, 1963 to 1999, may be cited together as the Companies Acts, 1963 to 2001, and shall be construed together as one Act.

2.—This Act shall come into operation on such day or days as may be fixed by order or orders made by the Minister, either generally or with reference to any particular provision, and different days may be so fixed for different purposes and different provisions of this Act. Commencement.

3.—(1) In this Act, unless the context otherwise requires— Interpretation.

“Act of 1963” means the Companies Act, 1963;

“Act of 1990” means the Companies Act, 1990;

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pt.1 S.3

“Acting Director” means a person appointed under *section 11* as the Acting Director of Corporate Enforcement;

“Companies Acts” means the Companies Act, 1963, and every enactment (including this Act) which is to be construed as one with that Act;

“Director” means the Director of Corporate Enforcement appointed under *section 7(2)* and includes an Acting Director while so acting and, in relation to a particular power of the Director, a delegate to whom the power is delegated under *section 13*;

“functions” includes powers and duties;

“Minister” means the Minister for Enterprise, Trade and Employment;

“officer of the Director” means—

- (a) an officer of the Minister assigned to the Director,
- (b) a member of An Garda Síochána seconded to the Director,
or
- (c) a person employed by the Minister or the Director under a contract for service or otherwise,

to assist the Director in carrying out functions of the Director under the Companies Acts or any other Act;

“prescribed” means prescribed by regulations made by the Minister;

“Review Group” means the Company Law Review Group established by *section 67*.

(2) In this Act—

- (a) a reference to a Part, section or Schedule is a reference to a Part or section of, or Schedule to, this Act, unless it is indicated that reference to some other enactment is intended;
- (b) a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended; and
- (c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

Regulations.

4.—(1) The Minister may make regulations prescribing any matter or thing referred to in this Act as prescribed or to be prescribed, or in relation to any matter referred to in this Act as the subject of regulation.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations or for giving full effect to this Act.

5.—(1) Every regulation or order (other than an order made under *section 2*) made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly but without prejudice to the validity of anything previously done under it.

Pr.1.
Laying of regulations and orders before Houses of the Oireachtas and power to revoke or amend orders.

(2) The Minister may by order revoke or amend an order (other than an order made under *section 2*) made under this Act (including an order under this subsection).

6.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Expenses of Minister.

PART 2

DIRECTOR OF CORPORATE ENFORCEMENT

Director

7.—(1) There shall be a Director of Corporate Enforcement.

Director of Corporate Enforcement.

(2) The Minister shall, in writing, appoint a person to be the Director of Corporate Enforcement.

(3) The Minister shall not appoint a person to be the Director unless the Civil Service Commissioners, after holding a competition under section 15 of the Civil Service Commissioners Act, 1956, have, under section 17 of that Act, selected the person for appointment and advised the Minister accordingly.

(4) The Director shall be a corporation sole and, notwithstanding any casual vacancy in the office from time to time, shall have perpetual succession and shall be capable in his or her corporate name of holding and disposing of real or personal property and of suing and being sued.

(5) The Director shall perform the functions conferred on him or her by or under this or any other Act and shall be assisted in the performance of those functions by the officers of the Director.

(6) All judges, courts or other persons or bodies acting judicially shall take judicial notice of the signature of the Director on or affixed to any document and it shall be presumed, unless the contrary is proved, that it has been duly signed or affixed.

8.—(1) Subject to *subsection (2)*, a person appointed to be the Director shall hold office for such period not exceeding 5 years beginning on the date of his or her appointment, and on such terms and conditions (which shall include a scheme of superannuation under *section 9*), as the Minister, with the consent of the Minister for Finance, may determine, and the Minister may, if he or she thinks fit, with the consent of the Minister for Finance, continue the appointment (including an appointment previously continued under this subsection) for such further period, not exceeding 5 years at any one time, as the Minister thinks appropriate.

Terms and conditions of appointment of Director.

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pr.2 S.8

(2) A person appointed as the Director is, by virtue of the appointment, a civil servant within the meaning of the Civil Service Regulation Act, 1956, as amended.

(3) The Director shall not hold any other office or employment in respect of which emoluments are payable.

Superannuation.

9.—(1) The Minister shall, with the consent of the Minister for Finance, if he or she considers it appropriate to do so, make and carry out a scheme or schemes for the granting of superannuation benefits to or in respect of one or more of the following, namely, the Director, the Acting Director and any officer of the Director.

(2) Every such scheme shall fix the time and conditions of retirement for the person or persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of such person.

(3) Every such scheme may be amended or revoked by a subsequent scheme made under this section with the consent of the Minister for Finance.

(4) No superannuation benefit shall be granted by the Minister to or in respect of the Director, the Acting Director or an officer of the Director otherwise than in accordance with a scheme under this section or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.

(5) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(6) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) In this section, “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

Removal,
disqualification or
cessation of
Director.

10.—(1) The Minister may at any time, for stated reasons, remove the Director from office.

(2) If the Director is removed from office under this section, the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for the removal.

(3) Where the Director is—

(a) nominated as a member of Seanad Éireann,

(b) nominated as a candidate for election to either House of the Oireachtas or to the European Parliament or becomes a member of a local authority, or

[2001.] *Company Law Enforcement Act, 2001.* [No. 28.]

- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament, Pr.2 S.10

he or she shall thereon cease to be the Director.

(4) A person who is for the time being—

- (a) entitled under the Standing Orders of either House of the Oireachtas to sit in that House,
- (b) a member of the European Parliament, or
- (c) a member of a local authority,

is, while he or she is so entitled or is such a member, disqualified from being the Director.

Acting Director

11.—(1) Subject to *subsection (2)*, the Minister may appoint a person to be the Acting Director of Corporate Enforcement to perform the functions of the Director during— Acting Director of Corporate Enforcement.

- (a) a period, or during all periods, when the Director is absent from duty or from the State or is, for any other reason, unable to perform the functions of the Director,
- (b) any suspension from office of the Director, or
- (c) a vacancy in the office of Director.

(2) A person shall not be appointed to perform the functions of the Director for a continuous period of more than 6 months during a vacancy in the office of Director.

(3) The Minister may, at any time, terminate an appointment under this section.

Functions of Director

12.—(1) The functions of the Director are—

Functions of Director.

- (a) to enforce the Companies Acts, including by the prosecution of offences by way of summary proceedings,
- (b) to encourage compliance with the Companies Acts,
- (c) to investigate instances of suspected offences under the Companies Acts,
- (d) at his or her discretion, to refer cases to the Director of Public Prosecutions where the Director of Corporate Enforcement has reasonable grounds for believing that an indictable offence under the Companies Acts has been committed,
- (e) to exercise, insofar as the Director feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Companies Acts,

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pr.2 S.12

(f) for the purpose of ensuring the effective application and enforcement of obligations, standards and procedures to which companies and their officers are subject, to perform such other functions in respect of any matters to which the Companies Acts relate as the Minister considers appropriate and may by order confer on the Director, and

(g) to perform such other functions for a purpose referred to in *paragraph (f)* as may be assigned to him or her by or under the Companies Acts or any other Act.

(2) The Director may do all such acts or things as are necessary or expedient for the purpose of the performance of his or her functions under this or any other Act.

(3) Notwithstanding that he or she has been so seconded but without prejudice to *subsections (5) and (6)*, a member of the Garda Síochána seconded to the office of the Director shall continue to be under the general direction and control of the Commissioner of the Garda Síochána.

(4) A member of the Garda Síochána so seconded shall continue to be vested with and may exercise or perform the powers or duties of a member of the Garda Síochána for purposes other than the purposes of this Act, as well as for the purposes of this Act.

(5) The Director shall be independent in the performance of his or her functions.

(6) The Director may perform such of his or her functions as he or she thinks fit through or by an officer of the Director and in the performance of those functions the officer shall be subject to the directions of the Director only.

Delegation.

13.—(1) Without prejudice to the generality of *section 12(6)*, the Director may, in writing, delegate to an officer of the Director any of the Director's powers under this or any other Act, except this power of delegation.

(2) A power delegated under *subsection (1)* shall not be exercised by the delegate except in accordance with the instrument of delegation.

(3) A delegate shall, on request by a person affected by the exercise of a power delegated to him or her, produce the instrument of delegation under this section, or a copy of the instrument, for inspection.

(4) A delegation under this section is revocable at will and does not prevent the exercise by the Director of a power so delegated.

Transfer of Minister's Functions to Director

Transfer of functions.

14.—(1) Each subsection mentioned in *column (3)* of the sections mentioned in *column (2)* opposite to those subsections of the Acts mentioned in the headings to *Parts 1 and 2* of the *Schedule*, is amended by the substitution for "Minister", wherever occurring, of "Director".

(2) Where, before its relevant amendment, anything was commenced under a provision of the Companies Acts by or under the authority of the Minister, it may be carried on or completed on or after that amendment by or under the authority of the Director. Pr.2 S.14

(3) A person authorised by the Minister under a relevantly amended provision shall be regarded as having been so authorised by the Director under that provision as relevantly amended.

(4) Where, before its relevant amendment, legal proceedings were pending under a provision of the Companies Acts to which the Minister is or was then the plaintiff or the prosecutor, the name of the Director shall be substituted in those proceedings for that of the Minister, or added in those proceedings as may be appropriate, and those proceedings shall not abate by reason of that substitution or addition.

(5) To avoid doubt, where, immediately before its relevant amendment, legal proceedings were pending under a provision of the Companies Acts as then in force in which the Minister was a defendant, the Director shall not be substituted for the Minister in those proceedings notwithstanding the amendment of that provision.

(6) In this section, “relevant amendment”, in relation to a provision of the Companies Acts, means an amendment by this or any other section of this Act which comprises or includes the substitution for “Minister” of “Director” (including the substitution of an entire provision or part of a provision which has the effect of transferring a function from the Minister to the Director), and “relevantly amended” has a corresponding meaning.

General

15.—Neither the Director nor any officer of the Director shall be liable in damages in respect of any thing done or omitted to be done in good faith by him or her in the performance or purported performance of a function under the Companies Acts or any other Act. Director or officer of Director indemnified against losses.

16.—(1) The Director shall, not later than 3 months after the end of each year, present a report to the Minister about the performance of the Director’s functions and other activities of the Director in that year, and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas within 2 months of receipt of the report. Reporting by Director.

(2) A report under *subsection (1)* shall include information in such form and about such matters as the Minister may direct but nothing in that or this subsection shall be construed as requiring the Director to include in such a report information the inclusion of which therein would, in the opinion of the Director, be likely to prejudice the performance by him or her of any of his or her functions.

(3) The Director shall furnish to the Minister such information about the performance of the Director’s functions as the Minister may from time to time require (other than information the provision of which under this subsection would, in the opinion of the Director, be likely to prejudice the performance by him or her of any of his or her functions).

(4) When so requested, the Director shall account to an appropriately established Committee of either House of the Oireachtas for

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pr.2 S.16

the performance of his or her functions but in discharging his or her duties under this subsection the Director shall not be required to furnish any information or answer any questions the furnishing or answering of which would, in the opinion of the Director, be likely to prejudice the performance by him or her of any of his or her functions.

Disclosure of information.

17.—(1) Information obtained by virtue of the performance by the Director of any of his or her functions which has not otherwise come to the notice of the public, shall not be disclosed, except in accordance with law, by any person, including—

- (a) the Director or a former Director,
- (b) a professional or other adviser (including a former adviser) to the Director, and
- (c) an officer or former officer of the Director.

(2) Notwithstanding *subsection (1)*, information referred to in that subsection which, in the opinion of the Director, may be required—

- (a) for a purpose or reason specified in subsection (1) of section 21 of the Act of 1990,
- (b) for the performance by a competent authority (within the meaning of that section 21) of a function or functions of the authority, or
- (c) for the performance by the Director of a function or functions of the Director,

may be disclosed by or under the authority of the Director to the extent that, in the opinion of the Director, is necessary for that purpose.

(3) Notwithstanding *subsection (1)*, information which, in the opinion of the Director or an officer of the Director, may relate to the commission of an offence which is not an offence under the Companies Acts may be disclosed to any member of An Garda Síochána.

(4) A person who contravenes this section is guilty of an offence.

Information relating to offences under Companies Acts may be disclosed to Director or officer of Director.

18.—Notwithstanding any other law, information which, in the opinion of the Competition Authority or a member of An Garda Síochána or an officer of the Revenue Commissioners, may relate to the commission of an offence under the Companies Acts may be disclosed by that Authority, member or officer to the Director or an officer of the Director.

PART 3

INVESTIGATIONS

Amendment of section 145 of Act of 1963.

19.—Section 145 of the Act of 1963 is amended—

(a) by the insertion of the following after subsection (3):

“(3A) A company shall, if required by the Director, produce to the Director for inspection the book or books kept in accordance with subsection (1) and shall give to

[2001.] *Company Law Enforcement Act, [No. 28.]*
2001.

the Director such facilities for inspecting and taking copies of the contents of the book or books as the Director may require.”, Pr.3 S.19

and

- (b) in subsection (4), by the insertion after “subsection (1)” of “or (3A)”.

20.—Section 7(3) of the Act of 1990 is amended by the substitution for “£500” and “£100,000” of “£5,000” and “£250,000” respectively. Amendment of section 7 of Act of 1990.

21.—Section 8(1) of the Act of 1990 is amended by the substitution for “on the application of the Minister appoint one or more competent inspectors” of “on the application of the Director appoint one or more competent inspectors (who may be or include an officer or officers of the Director)”. Amendment of section 8 of Act of 1990 — Investigation of company’s affairs on application of Director.

22.—Section 9 of the Act of 1990 is amended—

Amendment of section 9 of Act of 1990.

- (a) by the substitution for “If an inspector” of “(1) If an inspector”, and

- (b) by the insertion after subsection (1) of the following:

“(2) For the purposes of this section, a body corporate which is related to a company includes a body corporate with which the company has a commercial relationship, and a commercial relationship exists where goods or services are sold or given by one party to another.”.

23.—Section 10 of the Act of 1990 is amended—

Amendment of section 10 of Act of 1990.

- (a) in subsection (1), by the insertion after “reasonably able to give” of “; but where any such person claims a lien on books or documents produced by the person, the production shall be without prejudice to the lien”,

- (b) in subsection (2), by the insertion after “comply with the requirement” of “; but where any such person claims a lien on books or documents produced by the person, the production shall be without prejudice to the lien”,

- (c) by the substitution of the following for subsections (5) and (6):

“(5) If an officer or agent of the company or other body corporate, or any such person as is mentioned in subsection (2), refuses or fails within a reasonable time to—

- (a) produce to the inspectors any book or document which it is his duty under this section so to produce,

- (b) attend before the inspectors when required so to do, or

- (c) answer a question put to him by the inspectors with respect to the affairs of the company or other body corporate as the case may be,

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.3 S.23

the inspectors may certify the refusal or failure under their hand to the court, and the court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the person alleged to have so refused or failed and any statement which may be offered in defence, make any order or direction it thinks fit.

(6) Without prejudice to the generality of subsection (5), the court may, after a hearing under that subsection, direct—

(a) the person concerned to attend or re-attend before the inspectors or produce particular books or documents or answer particular questions put to him by the inspectors, or

(b) that the person concerned need not produce a particular book or document or answer a particular question put to him by the inspectors.”,

and

(d) in subsection (7), by the insertion after “auditors,” of “accountants, book-keepers or taxation advisors.”.

Amendment of section 11 of Act of 1990.

24.—(1) Section 11(3) of the Act of 1990 is amended—

(a) by the deletion from the end of paragraph (b)(vi) of “and”, and

(b) by the insertion after paragraph (b) of the following:

“(ba) furnish a copy to—

(i) an appropriate authority in relation to any of the matters referred to in section 21(1)(a) to (fb);
or

(ii) a competent authority as defined in section 21(3)(a) to (i);

and”.

(2) Section 11(4) of the Act of 1990 is amended by the substitution for “subsection (3)(a) or (b)” of “subsection (3)(a), (b) or (ba)”.

Amendment of section 13 of Act of 1990.

25.—Section 13 of the Act of 1990 is amended—

(a) by the substitution for “Minister for Justice” (wherever occurring) of “relevant Minister”,

(b) in subsection (1), by the substitution for “£100,000” of “£250,000”, and

(c) by the insertion of the following after subsection (3):

“(3A) In this section ‘relevant Minister’ means—

(a) in case the inspector or inspectors concerned was or were appointed under section 7, the Minister for Justice, Equality and Law Reform, and

[2001.] *Company Law Enforcement Act, [No. 28.]*
2001.

- (b) in case the inspector or inspectors concerned was or were appointed under section 8, the Minister.” Pr.3 S.25

26.—Section 14 of the Act of 1990 is amended by the insertion of the following after subsection (5): Amendment of section 14 of Act of 1990.

“(6) The court may, on the application of the Director, direct that a company the subject of an investigation under this section shall be liable, to such extent as the court may direct, to repay the Director the expenses of and incidental to the investigation.

(7) Without prejudice to subsection (6) but subject to subsection (8), a person—

- (a) convicted on indictment of an offence on a prosecution instituted,
- (b) ordered to pay damages or restore any property in proceedings brought, or
- (c) awarded damages or to whom property is restored in proceedings brought,

as a result of an investigation under this section may, in the same proceedings, be ordered to repay the Director all or part of the expenses referred to in subsection (6).

(8) The court shall not order a person to whom subsection (7)(c) relates to make payment in excess of one-tenth of the amount of the damages awarded or of the value of the property restored, as the case may be, and any such order shall not be executed until the person concerned has received his damages or the property has been restored.”.

27.—Section 16 of the Act of 1990 is amended—

Amendment of section 16 of Act of 1990.

- (a) in subsection (2)(d), by the deletion of “except in a liquidation,”,
- (b) in subsection (4), by the deletion of “(otherwise than in a liquidation)”,
- (c) in subsection (6), by the substitution of the following for paragraphs (a) and (b):

“(a) in the case of an order by the court, the court is satisfied that the relevant facts about the shares have been disclosed to the company or, as the case requires, to the Director, or that it is otherwise equitable to lift the restrictions;

(b) in the case of a direction of the Director, the Director is satisfied that the relevant facts about the shares have been disclosed to him; or

(c) the shares are to be sold and the court or the Director approves the sale.”,

and

- (d) in subsection (7), by the insertion after “or the company” of “, having given notice to the Director,”.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.3

28.—Section 18 of the Act of 1990 is amended—

Amendment of
section 18 of Act of
1990.

- (a) by the substitution for “An answer given by a person” of
“(1) An answer given by an individual”,
- (b) by the deletion of all the words from “, and a statement
required” down to and including “making it.” and the
substitution of “in any proceedings whatsoever (save pro-
ceedings for an offence (other than perjury in respect of
such an answer)).”, and
- (c) by the insertion of the following subsection:

“(2) A statement required by section 224 of the Prin-
cipal Act may, in any proceedings whatsoever (save pro-
ceedings for an offence (other than perjury in respect of
any matter contained in the statement)), be used in evi-
dence against any individual making or concurring in
making it.”.

Repeal and
substitution of
section 19 of Act of
1990 — Power of
Director to require
production of
documents.

29.—Section 19 of the Act of 1990 is repealed and the following
substituted:

“19.—(1) The Director may, subject to subsec-
tion (2), give directions to any body being—

- (a) a company formed and registered
under the Companies Acts;
- (b) an existing company within the
meaning of those Acts;
- (c) a company to which the Principal
Act applies by virtue of section
325 thereof or which is registered
under that Act by virtue of Part
IX thereof;
- (d) a body corporate incorporated in,
and having a principal place of
business in, the State, being a
body to which any of the pro-
visions of the said Act with
respect to prospectuses and allot-
ments apply by virtue of section
377 of that Act;
- (e) a body corporate incorporated out-
side the State which is carrying
on business in the State or has at
any time carried on business
therein;
- (f) any other body, whether incorpo-
rated or not, which is, or appears
to the Director to be, an
insurance undertaking to which
the Insurance Acts, 1909 to 2000,
or regulations on insurance made
under the European Communi-
ties Act, 1972, would apply,

requiring the body, at such time and place as may be specified in the directions, to produce such books or documents as may be so specified. Pr.3 S.29

(2) Directions may be given by the Director if he is of the opinion that there are circumstances suggesting that—

- (a) it is necessary to examine the books and documents of the body with a view to determining whether an inspector should be appointed to conduct an investigation of the body under the Companies Acts;
- (b) the affairs of the body are being or have been conducted with intent to defraud—
 - (i) its creditors,
 - (ii) the creditors of any other person, or
 - (iii) its members;
- (c) the affairs of the body are being or have been conducted for a fraudulent purpose other than described in paragraph (b);
- (d) the affairs of the body are being or have been conducted in a manner which is unfairly prejudicial to some part of its members;
- (e) any actual or proposed act or omission or series of acts or omissions of the body or on behalf of the body are or would be unfairly prejudicial to some part of its members;
- (f) any actual or proposed act or omission or series of acts or omissions of the body or on behalf of the body or by an officer of the body acting in his capacity as such officer are or are likely to be unlawful;
- (g) the body was formed for any fraudulent purpose;
- (h) the body was formed for any unlawful purpose; or
- (i) the body may be in possession of books or documents containing information relating to the books or documents of a body which

comes within the terms of one or more of paragraphs (a) to (h).

(3) Where by virtue of subsection (1) the Director has power to require the production of any books or documents from any body, the Director shall have the like power to require production of those books or documents from any person who appears to the Director to be in possession of them or to be in possession of—

- (a) other books or documents which may constitute copies of any books or documents of the body,
- (b) subject to subsection (4), other books or documents which may relate to any books or documents of the body,

but where any such person claims a lien on books or documents produced by him, the production shall be without prejudice to the lien.

(4) The power under subsection (3)(b) shall not be exercised unless—

- (a) in the opinion of the Director, there are reasonable grounds for believing the first and second-mentioned books or documents in subsection (3)(b) are related to one another (and those grounds may include grounds related to the relationship between the body and the person of whom the requirement under subsection (3)(b) is proposed to be made, a common origin of some or all of the information contained in the said books or documents or similar considerations), and
- (b) save where the Director is of opinion that compliance with this paragraph could result in the concealment, falsification, destruction or the disposal otherwise of the books or documents concerned, the Director notifies the person of whom the requirement under subsection (3)(b) is proposed to be made ('the third party') that the Director proposes to make that requirement and states in that notification the grounds for his opinion under paragraph (a) and that the third party may (if such is his contention) make submissions to the Director, within 21 days from

the date of the making of the notification, as to why he believes the said opinion of the Director to be erroneous (and the Director shall have regard to any such submissions so made before finally deciding whether to make the said requirement or not),

Pr.3 S.29

but in no case shall the third party be obliged to comply with such a requirement in relation to a particular book or document concerned if he would be entitled, by virtue of any rule of law or enactment, to refuse to produce, in any proceedings, the book or document on the ground of any privilege (whether the privilege to which section 23 applies or not).

(5) Any power conferred by or by virtue of this section to require a body or other person to produce books or documents shall include power—

(a) if the books or documents are produced—

(i) to take copies of them or extracts from them, and

(ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed (including in a professional, consultancy or similar capacity) by, the body in question, to provide, insofar as the person may be reasonably able so to do, an explanation of any of them, including an explanation of any apparent omissions from them or any omission of any book or document,

and

(b) if the books or documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are,

and in either event to give all assistance to the Director as the body or person is reasonably able to give in connection with an examination or proposed examination of books or documents under this section.

(6) If a requirement to produce books or documents or provide an explanation or make a statement which is imposed by virtue

of this section is not complied with, the body or other person on whom the requirement was so imposed shall be guilty of an offence; but where a person is charged with an offence under this subsection in respect of a requirement to produce any books or documents, it shall be a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(7) A statement made or an explanation provided by an individual in compliance with a requirement imposed by virtue of this section may be used in evidence against him in any proceedings whatsoever (save proceedings for an offence (other than an offence under subsection (6) or (8))).

(8) A person who provides an explanation or makes a statement required under this section which is false or misleading in a material respect, knowing it to be so false or misleading, shall be guilty of an offence.

(9) Notwithstanding section 202(9), it shall be an offence for a person or body with notice of a direction under subsection (1) (whether given or coming to the notice of the person or body before or after the commencement of *section 29* of the *Company Law Enforcement Act, 2001*) to destroy, mutilate, falsify or conceal any book or document the subject of a direction.

(10) The court may, on the application of the Director, direct that a body the subject of a direction under subsection (1) shall be liable, to such extent as the court may direct, to repay the Director the expenses of and incidental to the examination.

(11) Without prejudice to subsection (10) but subject to subsection (12), a person—

- (a) convicted on indictment of an offence on a prosecution instituted,
- (b) ordered to pay damages or restore any property in proceedings brought, or
- (c) awarded damages or to whom property is restored in proceedings brought,

as a result of a direction under subsection (1) may, in the same proceedings, be ordered to repay the Director all or part of the expenses referred to in subsection (10).

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

(12) The court shall not order a person to whom subsection (11)(c) relates to make payment in excess of one-tenth of the amount of the damages awarded or of the value of the property restored, as the case may be, and any such order shall not be executed until the person concerned has received his damages or the property has been restored. Pr.3 S.29

Concealing facts disclosed by documents.

19A.—(1) A person who—

- (a) knows or suspects that an investigation by the Director into an offence under the Companies Acts is being or is likely to be carried out, and
- (b) falsifies, conceals, destroys or otherwise disposes of a document or record which he knows or suspects is or would be relevant to the investigation or causes or permits its falsification, concealment, destruction or disposal,

shall be guilty of an offence.

(2) Where a person—

- (a) falsifies, conceals, destroys or otherwise disposes of a document or record, or
- (b) causes or permits its falsification, concealment, destruction or disposal,

in such circumstances that it is reasonable to conclude that the person knew or suspected—

- (i) that an investigation by the Director into an offence under the Companies Acts was being or was likely to be carried out, and
- (ii) that the document or record was or would be relevant to the investigation,

the person shall be taken for the purposes of this section to have so known or suspected, unless the court or the jury, as the case may be, is satisfied having regard to all the evidence that there is reasonable doubt as to whether the person so knew or suspected.”.

30.—Section 20 of the Act of 1990 is repealed and the following substituted: Repeal and substitution of section 20 of Act of 1990.

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

(2) A search warrant issued under this section shall be expressed and operate to authorise a named designated officer (‘the officer’), accompanied by such other persons as the officer

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pr.3 S.30

thinks necessary, at any time or times within 1 month from the date of issue of the warrant, on production if so requested of the warrant, to—

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

(3) Any material information which is seized under subsection (2) may be retained for a period of 6 months, or such longer period as may be permitted by a judge of the District Court, or if within that period there are commenced any proceedings to which the material information is relevant, until the conclusion of those proceedings.

(4) The officer may—

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

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

(6) A person who—

- (a) obstructs the exercise of a right of entry or search conferred by virtue of a search warrant issued under this section,

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

- (b) obstructs the exercise of a right so conferred to seize and retain material information, Pr.3 S.30
- (c) fails to comply with a requirement under *subsection (2)(c)* or gives a name, address or occupation which is false or misleading, or
- (d) fails to comply with a requirement under *subsection (4)(b)*,

shall be guilty of an offence.

(7) In this section—

‘computer’ includes a personal organiser or any other electronic means of information storage or retrieval;

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

‘designated officer’ means the Director or an officer of the Director authorised in that behalf by the Director; and

‘material information’ means—

- (a) any books or documents of which production has been required under or by virtue of section 14, 15 or 19 and which have not been produced in compliance with that requirement, or
- (b) any books or documents or other things (including a computer) which the officer has reasonable grounds for believing may provide evidence of or relating to the commission of an offence under the Companies Acts.”.

31.—Section 21(1) of the Act of 1990 is amended—

Amendment of
section 21 of Act of
1990.

(a) by the substitution for “Minister” (wherever occurring, except in paragraph (d)) of “Director”,

(b) by the substitution of the following for clause (V) of paragraph (a)(i):

“(V) the Taxes Consolidation Act, 1997, or an offence under an enactment referred to in section 1078(1) of that Act;”,

(c) by the insertion of the following after paragraph (f):

“(fa) for the purpose of the performance by the Competition Authority of any of its functions;

(fb) for the purpose of the performance by a committee (being a committee within the meaning of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997, to which sections 3 to 14 and 16 of that Act apply) of any of its functions;”,

and

(d) in paragraph (g), by the substitution of the following for subparagraph (ii):

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.3 S.31

“(ii) any body to which the Director has given a direction under section 19 or any person named in a report relating to an examination under that section;”.

Amendment of section 23 of Act of 1990.

32.—Section 23 of the Act of 1990 is amended—

(a) by the substitution of the following for subsection (2):

“(2) The Director shall not, under section 19, require the production by a person carrying on the business of banking of a document relating to the affairs of a customer, or relating to the affairs of any other person, unless either it appears to the Director that it is necessary to do so for the purposes of investigating the affairs of the person carrying on the business of banking, or the customer or other person is a person on whom a requirement has been imposed by virtue of that section.”,

and

(b) by the insertion of the following after subsection (3):

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

New section 23A of Act of 1990 — Assistance to overseas company law authorities.

33.—The Act of 1990 is amended by the insertion of the following after section 23:

“23A.—(1) The powers conferred on the Director by this Part are also exercisable by the Director on foot of a request from a company law authority for assistance in connection with inquiries being carried out by it or on its behalf where the Director is satisfied that such assistance is for the purpose of the discharge by the authority of its supervisory or regulatory functions.

(2) The Director may decline to accede to a request referred to in subsection (1) if, in the opinion of the Director, it is not appropriate to so accede or where the company law authority making the request does not undertake to make such contribution to the costs attendant on the request as the Director considers appropriate.

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

Examination of books and documents of certain companies to be continued by Minister or authorised officer.

34.—(1) Notwithstanding *subsections (2) and (3) of section 14* or any other provision of this Act, the Minister or any officer of the Minister authorised by him or her under section 19 of the Act of 1990 before the passing of this Act may, in relation to such body or bodies and to such extent as may be prescribed, continue to exercise, after such passing, the powers conferred on them respectively by sections 19 to 23 of the Act of 1990.

(2) In *subsection (1)*, “sections 19 to 23 of the Act of 1990” means those sections as they stand amended by this Act but with the substitution for references in them to the Director of references to the

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

Minister or an officer of the Minister authorised by the Minister Pr.3 S.34
under section 19 of the Act of 1990, as appropriate.

35.—Section 79(7) of the Act of 1990 is amended by the insertion after paragraph (b) of the following: Amendment of section 79 of Act of 1990.

“(bb) fails to fulfil, within the period of 5 days next following the day on which he becomes aware of the matters referred to in section 91(2), the obligation to give the Exchange (within the meaning of that section) a notice required by that section, or”.

36.—Section 92 of the Act of 1990 is amended—

Amendment of section 92 of Act of 1990 — Duty of relevant authority to report to Director.

(a) by the substitution for “Director of Public Prosecutions” (wherever occurring, except in subsection (4)) of “Director”, and

(b) by the substitution of the following for subsection (4):

“(4) If, where any matter is reported or referred to the Director under this section, he has reasonable grounds for believing that an offence under section 79(7)(bb) has been committed and—

(a) institutes proceedings in respect of the offence,
or

(b) refers the matter to the Director of Public Prosecutions and the Director of Public Prosecutions institutes proceedings in respect of the offence,

it shall be the duty of a relevant authority of the Exchange, and of every officer of the company whose securities are concerned, and of any other person who appears to the Director or to the Director of Public Prosecutions, as the case may be, to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the proceedings which he or they are reasonably able to give.”.

37.—Section 115 of the Act of 1990 is amended—

Amendment of section 115 of Act of 1990.

(a) by the substitution for “Director of Public Prosecutions” (wherever occurring, except in subsection (4)) of “Director”,

(b) by the substitution of the following for subsection (4):

“(4) If, where any matter is reported or referred to the Director under this section, he has reasonable grounds for believing that an offence under this Part has been committed and—

(a) institutes proceedings in respect of the offence,
or

(b) refers the matter to the Director of Public Prosecutions and the Director of Public Prosecutions institutes proceedings in respect of the offence,

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pt.3 S.37

it shall be the duty of a relevant authority of the recognised stock exchange concerned, and of every officer of the company whose securities are concerned, and of any other person who appears to the Director or to the Director of Public Prosecutions, as the case may be, to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the proceedings which he or they are reasonably able to give.”,

(c) in subsection (5), by the substitution for “Minister” of “Director”, and

(d) by the deletion of subsection (6).

Amendment of
section 118 of Act
of 1990.

38.—Section 118 of the Act of 1990 is amended by the insertion of the following after subsection (2):

“(2A) Subsection (1) shall not prevent a member, authorised person, relevant authority or employee or former employee of a recognised stock exchange from disclosing information concerning suspected breaches of the Companies Acts to the Director and it is the duty of each such person to so report any such suspected breach to the Director.”.

Amendment of
section 230 of Act
of 1990.

39.—Section 230 of the Act of 1990 is amended—

(a) by the substitution for “Director of Public Prosecutions” (wherever occurring, except in subsection (4)) of “Director”,

(b) by the substitution of the following for subsection (4):

“(4) If, where any matter is reported or referred to the Director under this section, he has reasonable grounds for believing that an offence under section 228 or 229 has been committed and—

(a) institutes proceedings in respect of the offence,
or

(b) refers the matter to the Director of Public Prosecutions and the Director of Public Prosecutions institutes proceedings in respect of the offence,

it shall be the duty of a relevant authority of the recognised stock exchange concerned, and of every officer of the company whose shares are concerned, and of any other person who appears to the Director or to the Director of Public Prosecutions, as the case may be, to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the proceedings which he or they are reasonably able to give.”,

(c) in subsection (5), by the substitution for “Minister” of “Director”, and

(d) by the deletion of subsection (6).

PART 4

RESTRICTIONS AND DISQUALIFICATIONS

40.—The Act of 1963 is amended by the insertion of the following after section 183:

New section 183A
of Act of 1963 —
Examination as to
solvency status.

“183A.—(1) Where the Director has reason to believe that a director of a company is an undischarged bankrupt, the Director may require the director of the company to produce by a specified date a sworn statement of all relevant facts pertaining to the company director’s financial position, both within the State and elsewhere, and, in particular, to any matter pertaining to bankruptcy as at a particular date.

(2) The court may, on the application of the Director, require a director of a company who has made a statement under subsection (1) to appear before it and answer on oath any question pertaining to the content of the statement.

(3) The court may, on the application of the Director, make a disqualification order (as defined in section 159 of the Companies Act, 1990) against a director of a company on the grounds that he is an undischarged bankrupt.

(4) A director of a company who fails to comply with a requirement under subsection (1) shall be guilty of an offence.”.

41.—(1) Section 150 of the Act of 1990 is amended—

Amendment of
section 150 of Act
of 1990.

(a) in subsection (3)(a)(i), by the substitution for “£100,000” of “£250,000”,

(b) in subsection (3)(a)(ii), by the substitution for “£20,000” of “£50,000”, and

(c) by the insertion of the following after subsection (4):

“(4A) An application for a declaration under subsection (1) may be made to the court by the Director, a liquidator or a receiver.

(4B) The court, in hearing an application for a declaration under subsection (1) from the Director, a liquidator or a receiver, may order that the directors against whom the declaration is made shall bear the costs of the application and any costs incurred by the applicant in investigating the matter.”.

(2) The amendments made by *paragraphs (a) and (b) of subsection (1)* shall not have effect in relation to a declaration under subsection (1) of section 150 of the Act of 1990 made before the commencement of this section and, accordingly, the requirements of subsection (3) of that section 150 that shall apply in respect of a person who is the subject of such a declaration made before that commencement shall be those that applied before that commencement.

42.—Section 160 of the Act of 1990 is amended—

Amendment of
section 160 of Act
of 1990.

(a) by the insertion of the following after subsection (1):

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pt.4 S.42

“(1A) Without prejudice to subsection (1), a person who—

- (a) fails to comply with section 3A(1) of the Companies (Amendment) Act, 1982, or section 195(8) of the Principal Act, or
- (b) in purported compliance with the said section 3A(1) or 195(8), permits the first-mentioned statement in the said section 3A(1) or, as the case may be, the first-mentioned notification in the said section 195(8) to be accompanied by a statement signed by him which is false or misleading in a material respect,

shall, upon the delivery to the registrar of companies of the said first-mentioned statement or notification or, as the case may be, the said statement or notification accompanied by a statement as aforesaid, be deemed, for the purposes of this Act, to be subject to a disqualification order for the period referred to in subsection (1B).

(1B) The period mentioned in subsection (1A) is—

- (a) so much as remains unexpired, at the date of the delivery mentioned in that subsection, of the period for which the person concerned is disqualified under the law of the other state referred to in section 3A(1) of the Companies (Amendment) Act, 1982, or section 195(8) of the Principal Act from being appointed or acting in the manner described therein, or
- (b) if the person concerned is so disqualified under the law of more than one other such state and the portions of the respective periods for which he is so disqualified that remain unexpired at the date of that delivery are not equal, whichever of those unexpired portions is the greatest.”,

(b) in subsection (2)—

- (i) in paragraph (f), by the substitution for “requirements;” of “requirements; or”, and
- (ii) by the insertion of the following after paragraph (f):

“(g) a person has been guilty of 2 or more offences under section 202(10); or

(h) a person was a director of a company at the time of the sending, after the commencement of section 42 of the *Company Law Enforcement Act, 2001*, of a letter under subsection (1) of section 12 of the Companies (Amendment) Act, 1982, to the company and the name of which, following the taking of the other steps under that section consequent on the sending of that letter, was struck off the register under subsection (3) of that section; or

(i) a 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 the court is satisfied that, if the conduct of the person or the circumstances otherwise affecting him that gave rise to the said order being made against him had occurred or arisen in the State, it would have been proper to make a disqualification order otherwise under this subsection against him;”, Pr.4 S.42

(c) by the insertion of the following after subsection (3):

“(3A) The court shall not make a disqualification order under paragraph (h) of subsection (2) against a person who shows to the court that the company referred to in that paragraph had no liabilities (whether actual, contingent or prospective) at the time its name was struck off the register or that any such liabilities that existed at that time were discharged before the date of the making of the application for the disqualification order.

(3B) A disqualification order under paragraph (i) of subsection (2) may be made against a person notwithstanding that, at the time of the making of the order, the person is deemed, by virtue of subsection (1A), to be subject to a disqualification order for the purposes of this Act, and where a disqualification order under the said paragraph (i) is made, the period of disqualification specified in it shall be expressed to begin on the expiry of the period of disqualification referred to in subsection (1B) to which the person, by virtue of subsection (1A), is subject or the said period of disqualification as varied, if such be the case, under subsection (8).”.

(d) in subsection (5), by the substitution for “paragraph (e)” of “paragraph (e) or (g)”,

(e) by the insertion of the following after subsection (6):

“(6A) In addition to the persons who in pursuance of subsections (4), (5) and (6) may make such an application, an application under subsection (2)(a), (b), (c), (d), (e), (f), (g), (h) or (i) may be made by the Director.”.

and

(f) by the insertion of the following after subsection (9):

“(9A) In considering the penalty to be imposed under this section, the court may as an alternative, where it adjudges that disqualification is not justified, make a declaration under section 150.

(9B) The court, in hearing an application for a disqualification order under subsection (2), may order that

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.4 S.42

the persons disqualified or against whom a declaration under section 150 is made as a result of the application shall bear the costs of the application and, in the case of an application by the Director, the Director of Public Prosecutions, a liquidator, a receiver or an examiner, any costs incurred by the applicant for the disqualification order in investigating the matter.”.

PART 5

WINDING-UP AND INSOLVENCY

Amendment of section 243 of Act of 1963 —
Inspection of books by creditors, contributories and Director.

43.—Section 243 of the Act of 1963 is amended by the insertion of the following after subsection (1):

“(1A) The court may, on the application of the Director, make an order for the inspection by the Director of any books and papers in the possession of a company the subject of a winding-up order and the company, every officer of the company and the liquidator shall give to the Director such access to and facilities as are necessary for inspecting and taking copies of those books and papers as the Director may require.”.

Amendment of section 245 of Act of 1963.

44.—Section 245 of the Act of 1963 is amended—

(a) in subsection (1), by the insertion after “The court may,” of “of its own motion or on the application of the Director,”, and

(b) by the substitution of the following for subsection (6):

“(6) A person who is examined under this section shall not be entitled to refuse to answer any question put to him on the ground that his answer might incriminate him and any answer by him to such a question may be used in evidence against him in any proceedings whatsoever (save proceedings for an offence (other than perjury in respect of such an answer)).”.

Amendment of section 245A of Act of 1963.

45.—Section 245A of the Act of 1963 is amended—

(a) by the substitution for “If in the course of an examination” of “(1) If in the course of an examination”,

(b) by the substitution for “the court may order such person” of “the court may, of its own motion or on the application of the Director, order such person”, and

(c) by the insertion of the following after subsection (1):

“(2) Where the court has made an order under subsection (1), it may, on the application of the Director or the liquidator, make a further order permitting the applicant, accompanied by such persons as the applicant thinks appropriate, to enter at any time or times within one month from the date of issue of the order, any premises (including a dwelling) owned or occupied by the person the subject of the order under subsection (1) (using such

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

force as is reasonably necessary for the purpose), to search the premises and to seize any money, property or books and papers of the company found on the premises. Pr.5 S.45

(3) Where the court has made an order under subsection (2), the applicant shall report to it as soon as may be on the outcome of any action on foot of the court's order and the court shall direct the applicant as to the disposition of anything seized on foot of the order.

(4) A direction under subsection (3) shall not be made in favour of the Director except in respect of the Director's costs and reasonable expenses.

(5) A person who obstructs the exercise of a right of entry, search and seizure conferred by virtue of an order made under subsection (2) or who obstructs the exercise of a right so conferred to take possession of anything referred to in that subsection, shall be guilty of an offence.

(6) Proceedings on foot of an offence under subsection (5) shall not prejudice the power of the court to issue proceedings for contempt of court for failure by a person to comply with an order under this section."

46.—Section 247 of the Act of 1963 is repealed and the following substituted:

Repeal and substitution of section 247 of Act of 1963 — Power to arrest absconding contributory or officer of company.

"247.—The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory, director, shadow director, secretary or other officer is about to quit the State or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination about the affairs of the company, may, of its own motion or on the application of the Director, a creditor of the company or any other interested person, cause the contributory, director, shadow director, secretary or other officer to be arrested, and his books and papers and movable personal property to be seized and him and them to be detained until such time as the court may order."

47.—Section 267 of the Act of 1963 is amended by the insertion of the following after subsection (2):

Amendment of section 267 of Act of 1963.

"(3) If at a meeting of creditors mentioned in section 266(1) a resolution as to the creditors' nominee as liquidator is proposed, it shall be deemed to be passed when a majority, in value only, of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution."

48.—Section 278(1) of the Act of 1963 is amended by the insertion after "notice of his appointment" of "and the registrar shall forward a copy to the Director".

Amendment of section 278 of Act of 1963.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.5

New sections 282A
to 282D of Act of
1963.

49.—The Act of 1963 is amended by the insertion of the following
after section 282:

“Inspection of
books in voluntary
winding-up.

282A.—(1) The court may, on the application of the Director, make an order for the inspection by the Director of any books and papers in the possession of a company which is in voluntary liquidation and the company, every officer of the company and the liquidator shall give to the Director such access and facilities as are necessary for inspecting and taking copies of those books and papers as the Director may require.

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

Power of court to
summon persons for
examination in
voluntary winding-
up.

282B.—(1) The court may, of its own motion or on the application of the Director, at any time where a company is in voluntary liquidation, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information relating to the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine such person on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require such person to produce any accounting records, deed, instrument, or other document or paper relating to the company that are in his custody or power.

(4) The court may, before the examination takes place, require such person to place before it a statement, in such form as the court may direct, of any transactions between him and the company of a type or class which the court may specify.

(5) If, in the opinion of the court, it is just and equitable so to do, it may direct that the costs of the examination be paid by the person examined.

(6) A person who is examined under this section is not entitled to refuse to answer any question put to him on the ground that his answer might incriminate him and any answer by him to such a question may be used in evidence against him in any proceedings whatsoever (save proceedings for an offence (other than perjury in respect of such an answer)).

(7) If a person without reasonable excuse fails at any time to attend his examination under this

section, he shall be guilty of contempt of court and liable to be punished accordingly. Pr.5 S.49

(8) In a case where a person without reasonable excuse fails at any time to attend his examination under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under this section, the court may cause the person to be arrested and his books and documents and moveable personal property to be seized and him and them to be detained until such time as the court may order.

Order for payment or delivery of property against person examined under section 282B.

282C.—(1) If in the course of an examination under section 282B it appears to the court that any person being examined—

- (a) is indebted to the company, or
- (b) has in his possession or control any money, property or books and papers of the company,

the court may, of its own motion or on the application of the Director, order the person—

- (i) to pay to the liquidator the amount of the debt or any part thereof, or
- (ii) to pay, deliver, convey, surrender or transfer to the liquidator such money, property or books and papers or any part thereof,

as the case may be, at such time and in such manner and on such terms as the court may direct.

(2) Where the court has made an order under subsection (1), it may, on the application of the Director or the liquidator, make a further order permitting the applicant, accompanied by such persons as the applicant thinks appropriate, to enter at any time or times within one month from the date of issue of the order any premises (including a dwelling) owned or occupied by the person the subject of the order under subsection (1) (using such force as is reasonably necessary for the purpose), to search the premises and to seize any money, property or books and papers of the company found on the premises.

(3) Where the court has made an order under subsection (2), the applicant shall report to it as soon as may be on the outcome of any action on foot of the court's order and the court shall direct the applicant as to the disposition of anything seized on foot of the order.

(4) A direction under subsection (3) shall not be made in favour of the Director except in

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.5 S.49

respect of the Director's costs and reasonable expenses.

(5) A person who obstructs the exercise of a right of entry, search and seizure conferred by virtue of an order made under subsection (2) or who obstructs the exercise of a right so conferred to take possession of anything referred to in that subsection, shall be guilty of an offence.

(6) Proceedings on foot of an offence under subsection (5) shall not prejudice the power of the court to issue proceedings for contempt of court for failure by a person to comply with an order under this section.

Power to arrest absconding contributory or officer of company in voluntary winding-up.

282D.—The court, at any time in respect of a voluntary winding-up, on proof of probable cause for believing that a contributory, director, shadow director, secretary or other officer is about to quit the State or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination about the affairs of the company, may, of its own motion or on the application of the Director, a creditor of the company or any other interested person, cause the contributory, director, shadow director, secretary or other officer to be arrested, and his books and papers and movable personal property to be seized and him and them to be detained until such time as the court may order.”.

Amendment of section 298 of Act of 1963.

50.—Section 298(2) of the Act of 1963 is amended by the substitution for “on the application of the liquidator” of “on the application of the Director, liquidator”.

Amendment of section 299 of Act of 1963.

51.—Section 299 of the Act of 1963 is amended—

(a) by the insertion of the following after subsection (1):

“(1A) Where the court directs a liquidator, in accordance with subsection (1), to refer a matter to the Director of Public Prosecutions, it shall also direct the liquidator to refer the matter to the Director and, in such a case, the liquidator shall furnish to the Director such information, and give to the Director such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director may require.”,

(b) in subsection (2), by the substitution for “Attorney General” (wherever occurring) of “Director of Public Prosecutions”,

(c) by the insertion of the following after subsection (2):

“(2A) Where a liquidator, in accordance with subsection (2), reports a matter to the Director of Public Prosecutions, the liquidator shall also refer the matter to the

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

Director and, in such a case, the liquidator shall furnish to the Director such information and give to the Director such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director may require.”, Pr.5 S.51

- (d) in subsection (3), by the substitution for “the Attorney General under subsection (2)” and “in pursuance of subsection (2)” of “the Director of Public Prosecutions under subsection (2), or to the Director under subsection (2A)” and “in pursuance of subsection (2) or subsection (2A), as the case may be”, respectively,
- (e) in subsection (4), by the substitution for “Attorney General under this section, he considers” of “Director of Public Prosecutions and the Director under this section, either the Director of Public Prosecutions or the Director considers”, and
- (f) in subsection (5), by the substitution for “of the Attorney General” of “of the Director of Public Prosecutions or of the Director”.

52.—Section 319 of the Act of 1963 is amended—

Amendment of section 319 of Act of 1963.

- (a) by the insertion of the following after subsection (2):

“(2A) Where a receiver ceases to act as receiver of the property of the company, the abstract under subsection (2) shall be accompanied by a statement from the receiver of his opinion as to whether or not the company is solvent and the registrar shall, on receiving the statement, forward a copy of it to the Director.”,

and

- (b) by the substitution of the following for subsection (7):

“(7) Where the registrar of companies becomes aware of the appointment of a receiver under this section, he shall forthwith inform the Director of the appointment.

(8) If the receiver makes default in complying with this section, he shall be guilty of an offence.”.

53.—The Act of 1963 is amended by the insertion of the following in Part VII after section 323:

New section 323A of Act of 1963 — Director may request production of receiver’s books.

“323A.—(1) The Director may, where he considers it necessary or appropriate, request (specifying the reason why the request is being made) the production of a receiver’s books for examination, either in regard to a particular receivership or to all receiverships undertaken by the receiver.

(2) Where the Director has requested the production of a receiver’s books for examination under subsection (1), the receiver to whom the request is made shall furnish the books to the Director and answer any questions concerning the content of the books and the conduct of a particular receivership or receiverships, and give to the Director all assistance in the matter as the receiver is reasonably able to give.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.5 S.53

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

(4) If the receiver makes default in complying with this section, he shall be guilty of an offence.”.

Amendment of
section 251 of Act
of 1990.

54.—Section 251 of the Act of 1990 is amended—

(a) in subsection (2)(a), by the insertion after “140,” of “149,”

(b) by the insertion of the following after subsection (2):

“(2A) The Director may apply to the court pursuant to this section for an order or judgement, as the case may be, under any of the sections which apply to a company to which this section applies.”,

and

(c) by the substitution of the following for subsection (4):

“(4) (a) Where, by virtue of this section, proceedings are instituted under section 139, 140 or 204 of this Act or section 245A, 297A or 298 of the Principal Act, section 297A(7)(b) of the Principal Act shall apply in relation to any order made as a result of those proceedings except that an order made as a result of an application by the Director pursuant to subsection (2A) shall not be made in favour of the Director, otherwise than as to his costs and expenses.

(b) A person having a claim against the company may apply for an enforcement order for a share of any sums or assets recovered or available following a successful action by the Director pursuant to subsection (2A), provided that the order is sought within a period of one month from the date of judgement on behalf of the Director.”.

Order to restrain
directors and others
from moving assets.

55.—The court may, on the application of a company, director, member, liquidator, receiver, creditor or the Director, order a director or other officer of a company not to remove his or her assets from the State or to reduce his or her assets within or outside the State below an amount to be specified by the court, where the court is satisfied that—

(a) the applicant has a substantive civil cause of action or right to seek a declaration of personal liability or claim for damages against the director, other officer or the company, and

(b) there are grounds for believing that the respondent may remove or dispose of his, her or the company’s assets with a view to evading his, her or the company’s obligations and frustrating an order of the court.

56.—(1) A liquidator of an insolvent company shall, within 6 months after his or her appointment or the commencement of this section, whichever is the later, and at intervals as required by the Director thereafter, provide to the Director a report in the prescribed form.

Pr.5
Liquidator to report on conduct of directors.

(2) A liquidator of an insolvent company shall, not earlier than 3 months nor later than 5 months (or such later time as the court may allow and advises the Director) after the date on which he or she has provided to the Director a report under *subsection (1)*, apply to the court for the restriction under section 150 of the Act of 1990 of each of the directors of the company, unless the Director has relieved the liquidator of the obligation to make such an application.

(3) A liquidator who fails to comply with *subsection (1)* or *(2)* is guilty of an offence.

57.—(1) The Director may on his or her own motion or where a complaint is made to the Director by a member, contributory or creditor of the company, request, specifying the reason why the request is being made, the liquidator of a company in liquidation to produce to the Director the liquidator's books for examination, either in relation to a particular liquidation process or to all liquidations undertaken by the liquidator, and the liquidator shall comply with the request.

Director's power to examine liquidator's books.

(2) The liquidator shall answer any questions of the Director concerning the content of the books requested under *subsection (1)* to be produced and the conduct of a particular liquidation or all liquidations, and give to the Director such assistance in the matter as the liquidator is reasonably able to give.

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

(4) A liquidator who fails to comply with a request or requirement under this section is guilty of an offence.

58.—Where a disciplinary committee or tribunal (however called) of a prescribed professional body finds that a member conducting a liquidation or receivership has not maintained appropriate records, or it has reasonable grounds for believing that a member has committed an indictable offence under the Companies Acts during the course of a liquidation or receivership, the body shall report the matter, giving details of the finding or, as the case may be, of the alleged offence, to the Director forthwith and if the body fails to comply with this section it, and every officer of the body to whom the failure is attributable, is guilty of an offence.

Reporting to Director of misconduct by liquidators or receivers.

PART 6

MEASURES TO IMPROVE COMPLIANCE WITH FILING OBLIGATIONS

59.—Sections 125 and 126 of the Act of 1963 are repealed and the following substituted:

Repeal of sections 125 and 126 of Act of 1963 and substitution of section 125 — Annual return.

“125.—(1) Every company shall, once at least in every year, subject to section 127, make a return to the registrar of companies, being its annual return, in the prescribed form.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pr.6 S.59

(2) If a company fails to comply with this section, the company and—

(a) every officer of the company who is in default, and

(b) any person in accordance with whose directions or instructions the directors of the company are accustomed to act and to whose directions or omissions the default is attributable,

shall be guilty of an offence.

(3) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.”.

Repeal and substitution of section 127 of Act of 1963 — Annual return date.

60.—Section 127 of the Act of 1963 is repealed and the following substituted:

“127.—(1) The annual return of a company shall be made up to a date which is not later than its annual return date.

(2) Subject to subsection (3), the annual return shall be delivered to the registrar of companies—

(a) in the case of the first annual return following the commencement date of a company incorporated before the commencement date — not later than 28 days after the annual return date or 3 months after the commencement date, whichever is the later, and

(b) in any other case — not later than 28 days after the annual return date,

unless it is made up to an earlier date in which case it shall be delivered to the registrar not later than 28 days after that earlier date.

(3) The court, on an application made (on notice to the registrar of companies) by a company, may, if it is satisfied that it would be just to do so, make an order extending the time for the purposes of paragraph (a) or (b) of subsection (2) in which the annual return of the company in relation to a particular year may be delivered to the registrar of companies.

(4) As soon as practicable after the making of an order under subsection (3), the company to whom the order relates shall deliver an office copy of the order to the registrar of companies and, if the company fails to do so, the company and every officer of the company who is in default shall be guilty of an offence.

(5) For companies incorporated before the commencement date, the annual return date is each anniversary of the date to which the then most recent annual return delivered to the registrar by the company was made up, but if no annual return had been delivered by the company to the registrar, the first annual return date is the first day after the commencement date that is 6 months after the date on which the anniversary of incorporation of the company falls and, subject to subsection (8), subsequent annual return dates fall on each anniversary of that first annual return date.

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

(6) For companies incorporated on or after the commencement date, the first annual return date is the day 6 months after the date of incorporation of the company and, subject to subsection (8), subsequent annual return dates fall on each anniversary of the first annual return date. Pt.6 S.60

(7) Notwithstanding anything to the contrary in the Companies Acts, companies incorporated on or after the commencement date shall not be required to annex accounts to the first annual return delivered to the registrar after the commencement date in compliance with the Companies Acts.

(8) Where the annual return of a company is made up to a date earlier than 14 days before its annual return date, the annual return date shall thereafter be each anniversary of the date to which that annual return is made up.

(9) A company may establish a new annual return date by—

(a) delivering an annual return to the registrar not later than 28 days after the annual return date to which, notwithstanding any provision to the contrary in the Companies Acts, it is by virtue of this subsection not required to annex accounts, and

(b) nominating to the registrar, on the prescribed form, the new annual return date, which date shall be no later than 6 months after the existing annual return date.

(10) Where a company has established a new annual return date pursuant to subsection (9), it shall not again establish a new annual return date pursuant to that subsection until at least 5 years have elapsed since the establishment of the first-mentioned new annual return date.

(11) (a) Notwithstanding subsection (5), a company incorporated before the commencement date may establish a new annual return date by—

(i) delivering an annual return to the registrar not later than 28 days after the first annual return date after the commencement date to which, notwithstanding anything to the contrary in the Companies Acts, it is by virtue of this subsection not required to annex accounts, and

(ii) nominating to the registrar, on the prescribed form, the new annual return date, which date shall be no later than 6 months after the existing annual return date.

(b) Where a company has nominated a new annual return date pursuant to paragraph (a), it may not establish a new annual return date pursuant to subsection (9) before such time as it has delivered to the registrar an annual return made up to the new annual return date nominated pursuant to paragraph (a)(ii).

(12) If a company fails to comply with this section, the company and—

(a) every officer of the company who is in default, and

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.6 S.60

- (b) any person in accordance with whose directions or instructions the directors of the company are accustomed to act, and on whose directions or omissions the default is attributable,

shall be guilty of an offence.

(13) Proceedings in relation to an offence under this section may be brought and prosecuted by the registrar of companies.

(14) In this section, ‘commencement date’ means the date of commencement of *section 60* of the *Company Law Enforcement Act, 2001*.”.

Amendment of section 153 of Act of 1963 — Financial year and annual return date of holding company and subsidiary.

61.—Section 153 of the Act of 1963 is amended by the substitution of the following for subsection (2):

“(2) Where it appears to the Minister desirable for a holding company or a holding company’s subsidiary to extend its financial year so that the subsidiary’s financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to an annual general meeting from one calendar year to the next, or for a holding company or a holding company’s subsidiary to extend its annual return date so that the subsidiary’s annual return date may correspond with that of the holding company, the Minister may—

- (a) on the application or with the consent of the directors of the company whose financial year is to be extended, direct that in the case of that company, the submission of accounts to an annual general meeting or the holding of an annual general meeting shall not be required in the earlier of the calendar years, or
- (b) on the application or with the consent of the directors of the company whose annual return date is to be extended, direct that an extension is to be permitted in the case of that company.”.

Amendment of section 370 of Act of 1963.

62.—Section 370 of the Act of 1963 is amended by the insertion of the following after subsection (3):

“(4) A certificate in writing made by the registrar of companies as to—

- (a) the contents of a register kept by the registrar,
- (b) the date on which a document was filed or registered with or delivered to the registrar,
- (c) the date on which a document was received by the registrar, or
- (d) the most recent date (if any) on which a requirement under the Companies Acts was complied with by or in relation to a company,

shall in all legal proceedings be admissible without further proof, until the contrary is shown, as evidence of the facts stated in the certificate.”.

[2001.] *Company Law Enforcement Act, 2001.* [No. 28.]

63.—(1) Section 395 of the Act of 1963 is amended—

Pt.6

Amendment of section 395 of Act of 1963 and repeal of Fifth Schedule.

(a) in subsection (2)(b), by the deletion of “and the form in Part II of the Fifth Schedule”, and

(b) by the insertion of the following after subsection (2):

“(3) To avoid doubt, an alteration to the Eighth Schedule under subsection (2)(a) may provide for different fees to be charged for the registration of documents depending on whether they are delivered to the registrar of companies within a specified time or at various times after a specified time.”.

(2) The Fifth Schedule to the Act of 1963 is repealed.

64.—Section 7 of the Companies (Amendment) Act, 1986, is amended—

Amendment of section 7 of Companies (Amendment) Act, 1986.

(a) in subsection (1)(a), by the substitution for all words after “as the case may be, laid” of “or to be laid before the annual general meeting of the company for that year, and”, and

(b) by the insertion of the following after subsection (1):

“(1A) Every document, being a balance sheet, profit and loss account, report or statement, annexed to the annual return in accordance with paragraph (a) of subsection (1) shall cover the period—

(a) in the case of the first annual return to which such documents are annexed — since the incorporation of the company, and

(b) in any other case — since the end of the period covered by the balance sheet, profit and loss account, report or statement, as the case may be, annexed to the preceding annual return,

made up to a date not earlier by more than 9 months than the date to which the annual return is made up.”.

65.—Section 17(1) of the Companies (Amendment) Act, 1986, is amended by the insertion in paragraph (a), after “the end of that financial year”, of “, or on the next annual return date of the company after the end of that financial year, whichever is the earlier”.

Amendment of section 17(1) of Companies (Amendment) Act, 1986.

66.—(1) Where the registrar of companies has reasonable grounds for believing that a person is in default in the delivery, filing or making to the registrar of a return or similar document required under the Companies Acts, the registrar may deliver to the person or, where the person believed to be in default is a company, to an officer of the company, a notice in the prescribed form stating—

Special provisions applying where default in delivery of documents to registrar of companies.

(a) that the person or company has failed to deliver, file or make a specified return or similar document to the registrar under a specified section of the Companies Acts,

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.6 S.66

- (b) that the person to whom the notice is delivered may, during a period of 21 days beginning on the date of the notice,
- (i) remedy the default, and
 - (ii) make to the registrar a payment of a prescribed amount which shall be accompanied by the notice,
- and
- (c) that a prosecution of the person to whom the notice is delivered will not be instituted during the period specified in the notice, or, if the default is remedied and the payment specified in the notice is made during that period, at all.

(2) Where a notice is delivered under subsection (1)—

- (a) a person to whom it applies may, during the period specified in the notice, make to the registrar the payment 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 default shall not be instituted in the period specified in the notice, and, if the default is remedied and the payment specified in the notice is made during that period, no prosecution in respect of the alleged default shall be instituted at all.

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

(4) All payments made to the registrar under this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

PART 7

COMPANY LAW REVIEW GROUP

Establishment of
Company Law
Review Group.

67.—There is hereby established a body to be known as the Company Law Review Group.

Functions of
Review Group.

68.—(1) The Review Group shall monitor, review and advise the Minister on matters concerning—

- (a) the implementation of the Companies Acts,
- (b) the amendment of the Companies Acts,
- (c) the consolidation of the Companies Acts,
- (d) the introduction of new legislation relating to the operation of companies and commercial practices in Ireland,

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

- (e) the Rules of the Superior Courts and case law judgements insofar as they relate to the Companies Acts, Pr.7 S.68
- (f) the approach to issues arising from the State's membership of the European Union, insofar as they affect the operation of the Companies Acts,
- (g) international developments in company law, insofar as they may provide lessons for improved State practice, and
- (h) other related matters or issues, including issues submitted by the Minister to the Review Group for consideration.

(2) In advising the Minister the Review Group shall seek to promote enterprise, facilitate commerce, simplify the operation of the Companies Acts, enhance corporate governance and encourage commercial probity.

69.—(1) The Review Group shall consist of such and so many persons as the Minister from time to time appoints to be members of the Review Group. Membership of Review Group.

(2) The Minister shall from time to time appoint a member of the Review Group to be its chairperson.

(3) Members of the Review Group shall be paid such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.

(4) A member of the Review Group may at any time resign his or her membership of the Review Group by letter addressed to the Minister.

(5) The Minister may at any time, for stated reasons, terminate a person's membership of the Review Group.

70.—(1) The Minister shall, at least once in every 2 years, after consultation with the Review Group, determine the programme of work to be undertaken by the Review Group over the ensuing specified period. Meetings and business of Review Group.

(2) Notwithstanding *subsection (1)*, the Minister may, from time to time, amend the Review Group's work programme, including the period to which it relates.

(3) The Review Group shall hold such and so many meetings as may be necessary for the performance of its functions and the achievement of its work programme and may make such arrangements for the conduct of its meetings and business (including by the establishment of sub-committees and the fixing of a quorum for a meeting) as it considers appropriate.

(4) In the absence of the chairperson from a meeting of the Review Group, the members present shall elect one of their number to be chairperson for that meeting.

(5) A member of the Review Group, other than the chairperson, who is unable to attend a meeting of the Review Group, may nominate a deputy to attend in his or her place.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.7
Annual Report and
provision of
information to
Minister.

71.—(1) No later than 3 months after the end of each calendar year, the Review Group shall make a report to the Minister on its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within a period of 2 months from the receipt of the report.

(2) A report under *subsection (1)* shall include information in such form and regarding such matters as the Minister may direct.

(3) The Review Group shall, if so requested by the Minister, provide a report to the Minister on any matter—

(a) concerning the functions or activities of the Review Group,
or

(b) referred by the Minister to the Review Group for its advice.

PART 8

AUDITORS

Amendment of
section 187 of Act
of 1990.

72.—Section 187 of the Act of 1990 is amended—

(a) in subsection (1)(a)(iii), by the insertion after “Principal Act” of “and holds a valid practising certificate from such a body”, and

(b) by the insertion of the following after subsection (11):

“(12) (a) The Director may demand of a person acting as an auditor of a company or as a public auditor, or purporting to be qualified to so act, the production of evidence of his qualifications under subsection (1) in respect of any time or period during which he so acted or purported to be qualified to so act, and if the person refuses or fails to produce the evidence within 30 days of the demand, or such longer period as the Director may allow, he shall be guilty of an offence.

(b) In a prosecution for an offence under this subsection, it shall be presumed, until the contrary is shown by the defendant, that the defendant did not, within 30 days, or any longer period allowed, after the day on which the production was demanded, produce evidence in accordance with paragraph (a).

(13) (a) Where a person is the subject of a prosecution under subsection (9) for a contravention of subsection (6) or (7), it shall be sufficient evidence, until the contrary is shown by the person, of non-membership of a body of accountants for the time being recognised by the Minister for the purposes of this section for any or all such bodies to certify in writing to the court such non-membership, provided that the first-mentioned person is provided by the prosecutor with a copy of the certificate or certificates, served by registered post, not

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

later than 21 days before any such certificate is presented in evidence to the court. Pr.8 S.72

- (b) Where a person the subject of a prosecution proposes to contest the certification of non-membership contained in a certificate provided for by paragraph (a), he shall give written notice thereof, served by registered post, to the prosecutor within 21 days, or such longer period as the court may allow, of receipt of the certificate from the prosecutor.”.

73.—Section 192 of the Act of 1990 is amended by the insertion of the following after subsection (5): Amendment of section 192 of Act of 1990.

“(6) Where a disciplinary committee or tribunal (however called) of a body of accountants recognised for the purposes of section 187 has reasonable grounds for believing that an indictable offence under the Companies Acts may have been committed by a person while the person was a member of the body, the body shall, as soon as possible, provide a report to the Director giving details of the alleged offence and shall furnish the Director with such further information in relation to the matter as the Director may require.

(7) Where a body referred to in subsection (6) fails to comply with that subsection or a requirement of the Director under that subsection, it, and every officer of the body to whom the failure is attributable, shall be guilty of an offence.”.

74.—Section 194 of the Act of 1990 is amended—

- (a) in subsection (1), by the substitution of the following for paragraph (a):

“(a) as soon as may be, by recorded delivery, serve a notice in writing on the company stating their opinion, and”,

- (b) in subsection (1)(b), by the insertion after “form of the notice” of “and the registrar shall forthwith forward a copy of the notice to the Director”,

- (c) by the insertion of the following after subsection (3):

“(3A) Where the auditors of a company file a notice pursuant to subsection (1)(b), they shall, if requested by the Director—

- (a) furnish to the Director such information, including an explanation of the reasons for their opinion that the company had contravened section 202, and

- (b) give to the Director such access to documents, including facilities for inspecting and taking copies,

Amendment of section 194 of Act of 1990 — Duty of auditors if proper books of account not being kept or other offences suspected.

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pt.8 S.74

being information or documents in their possession or control and relating to the matter the subject of the notice, as the Director may require.

(3B) Any written information given in response to a request of the Director under subsection (3A) shall in all legal proceedings be admissible without further proof, until the contrary is shown, as evidence of the facts stated therein.”

(d) in subsection (4), by the substitution for “subsection (1)” of “subsection (1), (3A) or (5)”, and

(e) by the insertion of the following after subsection (4):

“(5) Where, in the course of, and by virtue of, their carrying out an audit of the accounts of the company, information comes into the possession of the auditors of a company that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has committed an indictable offence under the Companies Acts, the auditors shall, forthwith after having formed it, notify that opinion to the Director and provide the Director with details of the grounds on which they have formed that opinion.

(6) No professional or legal duty to which an auditor is subject by virtue of his appointment as an auditor of a company shall be regarded as contravened by, and no liability to the company, its shareholders, creditors or other interested parties shall attach to, an auditor, by reason of his compliance with an obligation imposed on him by or under this section.”.

PART 9

TRANSACTIONS INVOLVING DIRECTORS

Amendment of section 25 of Act of 1990. **75.**—Section 25 of the Act of 1990 is amended by the insertion of the following after subsection (3):

“(3A) For the purposes of this Part, a lease of land which reserves a nominal annual rent of not more than £10 is not a credit transaction where a company grants the lease in return for a premium or capital payment which represents the open market value of the land thereby disposed of by the company.”.

Amendment of section 26 of Act of 1990. **76.**—Section 26 of the Act of 1990 is amended—

(a) by the substitution of the following for subsection (1):

“(1) For the purposes of this Part, a person is connected with a director of a company if, but only if, the person (not being himself a director of the company) is—

(a) that director’s spouse, parent, brother, sister or child;

(b) a person acting in his capacity as the trustee of any trust, the principal beneficiaries of which are the director, his spouse or any of his children or any body corporate which he controls;
or

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

(c) in partnership, within the meaning of section 1(1) of the Partnership Act, 1890, with that director.”, Pr.9 S.76

(b) by the substitution of the following for subsection (3):

“(3) For the purposes of this section, a director of a company shall be deemed to control a body corporate if, but only if, he is, alone or together with any other director or directors of the company, or any person connected with the director or such other director or directors, interested in one-half or more of the equity share capital of that body or entitled to exercise or control the exercise of one-half or more of the voting power at any general meeting of that body.”,

and

(c) by the insertion of the following after subsection (5):

“(6) It shall be presumed for the purposes of this Part, until the contrary is shown, that the sole member of a single-member private limited company within the meaning of the European Communities (Single-Member Private Limited Companies) Regulations, 1994 (S.I. No. 275 of 1994) is a person connected with a director of that company.”.

77.—Section 33 of the Act of 1990 is amended by the insertion of the following after subsection (2): Amendment of section 33 of Act of 1990.

“(3) Where the terms of the arrangements referred to in subsection (2) are not amended within the period specified in that subsection, the arrangements shall be voidable at the instance of the company unless section 38(1)(a) or (b) applies.”.

78.—Section 34 of the Act of 1990 is repealed and the following substituted: Repeal and substitution of section 34 of Act of 1990 — Exceptions to section 31 in certain circumstances.

“34.—(1) Section 31 does not prohibit a company from entering into a guarantee or providing any security in connection with a loan, quasi-loan or credit transaction made by any other person for a director of the company or of its holding company, or for a person connected with such a director, if—

(a) the entering into the guarantee is, or the provision of the security is given, under the authority of a special resolution of the company passed not more than 12 months previously; and

(b) the company has forwarded with each notice of the meeting at which the special resolution is to be considered or, if the procedure detailed in subsection (6) is followed, the company has appended to the resolution, a copy of a statutory declaration which complies with subsections (2) and (3) and also delivers, within 21 days after the date on which the guarantee was entered into or the date on which the security was provided, as the case may be, a copy of the declaration to the registrar of companies for registration.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pr.9 S.78

(2) The statutory declaration shall be made at a meeting of the directors held not earlier than 24 days before the meeting referred to in subsection (1)(b) or, if the special resolution is passed in accordance with subsection (6), not earlier than 24 days before the signing of the special resolution, and shall be made by the directors or, in the case of a company having more than 2 directors, by a majority of the directors.

(3) The statutory declaration shall state—

- (a) the circumstances in which the guarantee is to be entered into or the security is to be provided;
- (b) the nature of the guarantee or security;
- (c) the person or persons to or for whom the loan, quasi-loan or credit transaction (in connection with which the guarantee is to be entered into or the security is to be provided) is to be made;
- (d) the purpose for which the company is entering into the guarantee or is providing the security;
- (e) the benefit which will accrue to the company directly or indirectly from entering into the guarantee or providing the security; and
- (f) that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company, having entered into the guarantee or provided the security, will be able to pay its debts in full as they become due.

(4) A statutory declaration under subsection (3) has no effect for the purposes of this Act unless it is accompanied by a report—

- (a) drawn up in the prescribed form, by an independent person who is qualified at the time of the report to be appointed, or to continue to be, the auditor of the company; and
- (b) which shall state whether, in the opinion of the independent person, the statutory declaration is reasonable.

(5) Where a director of a company makes the statutory declaration without having reasonable grounds for the opinion that the company having entered into the guarantee or provided the security will be able to pay its debts in full as they become due—

- (a) the court, on the application of a liquidator, creditor, member or contributory of the company, may declare that the director shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company; and
- (b) if the company is wound up within 12 months after the making of the statutory declaration and its debts are not paid or provided for in full within 12 months after the commencement of the winding-up, it shall be presumed, until the contrary is shown, that the

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

director did not have reasonable grounds for his opinion. Pr.9 S.78

(6) The special resolution referred to in subsection (1)(a) may be passed in accordance with section 141(8) of the Principal Act.

(7) Unless all of the members of the company entitled to vote at general meetings of the company vote in favour of the special resolution, the company shall not enter into the guarantee or provide the security before the expiry of 30 days after the special resolution has been passed or, if an application referred to in subsection (8) is made, until the application has been disposed of by the court.

(8) If application is made to the court in accordance with this section for the cancellation of the special resolution, the special resolution shall not have effect except to the extent to which it is confirmed by the court.

(9) Subject to subsection (10), an application referred to in subsection (8) may be made by the holders of not less in the aggregate than 10 per cent in nominal value of the company's issued share capital or any class thereof.

(10) An application shall not be made under subsection (8) by a person who has consented to, signed or voted in favour of the special resolution.

(11) An application referred to in subsection (8) must be made within 28 days after the date on which the special resolution was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose."

79.—Section 35 of the Act of 1990 is amended by the substitution for "its holding company" (wherever occurring) of "any company which is its holding company, subsidiary or a subsidiary of its holding company".

Amendment of section 35 of Act of 1990 — Inter-company transactions in the same group.

PART 10

MISCELLANEOUS

80.—(1) The registrar of companies may accept for registration a document containing standard form text from the objects clause of a memorandum of association or from articles of association and shall assign a reference number to each document so registered.

Reference Memoranda and Articles of Association.

(2) Notwithstanding anything in the Companies Acts, a document filed pursuant to *subsection (1)* need not relate to a particular company or contain the registered number of a company.

(3) A memorandum or articles of association may contain a statement that it is to incorporate the text of a document previously registered with the registrar pursuant to *subsection (1)*, which document shall be identified by the reference number assigned to it by the registrar.

(4) Where a memorandum or articles of association contains a statement as referred to in *subsection (3)*, it shall be deemed for all purposes to incorporate within it the text of the relevant document

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pr.10 S.80 filed with the registrar pursuant to *subsection (1)*, so that it shall form and be read as one entire document, and where such a memorandum or articles of association has been registered by the registrar and is inspected by any person, the registrar shall also make available for inspection the related document filed with him or her pursuant to *subsection (1)*.

Amendment of section 7 of Act of 1963. **81.**—Section 7 of the Act of 1963 is amended by the insertion after “The memorandum must be printed” of “in an entire format or in a form pursuant to *section 80* of the *Company Law Enforcement Act, 2001*”.

Amendment of section 14 of Act of 1963. **82.**—Section 14(a) of the Act of 1963 is amended by the insertion after “printed” of “in an entire format or in a form pursuant to *section 80* of the *Company Law Enforcement Act, 2001*”.

Amendment of section 17 of Act of 1963. **83.**—Section 17 of the Act of 1963 is amended by the insertion after “shall be delivered to the registrar of companies” of “in an entire format or in a form pursuant to *section 80* of the *Company Law Enforcement Act, 2001*”.

Amendment of section 2 of Act of 1963. **84.**—Section 2(1) of the Act of 1963 is amended—
 (a) by the substitution of the following for the definition of “annual return”:
 “ ‘annual return’ means the return required to be made under section 125;
 ‘annual return date’ means the date in each year not later than that to which the annual return shall be made up, the calculation of which is provided for in section 127;”,
 and
 (b) by the substitution of the following for the definition of “undischarged bankrupt”:
 “ ‘undischarged bankrupt’ means a person who is declared bankrupt by a court of competent jurisdiction, within the State or elsewhere, and who has not obtained a certificate of discharge or its equivalent in the relevant jurisdiction;”.

Amendment of section 10 of Act of 1963. **85.**—Section 10(8) of the Act of 1963 is amended by the substitution for “Minister” (second occurring) of “registrar of companies”.

Amendment of section 21 of Act of 1963. **86.**—Section 21 of the Act of 1963 is amended by the substitution for “Minister” of “registrar of companies”.

Amendment of section 23 of Act of 1963. **87.**—Section 23 of the Act of 1963 is amended—
 (a) in subsections (1) and (2), by the substitution for “Minister” (wherever occurring) of “registrar of companies”,
 (b) in subsection (5), by the substitution for “but if the Minister is of opinion that any other Minister” and “that other

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

Minister” of “but if the registrar of companies is of opinion that any Minister” and “that Minister”, respectively, and

Pr.10 S.87

(c) by the insertion of the following after subsection (6):

“(7) Summary proceedings in relation to an offence under subsection (2) may be brought and prosecuted by the registrar of companies.”.

88.—(1) Section 24 of the Act of 1963 is repealed and the following substituted:

Repeal and substitution of section 24 of Act of 1963.

“24.—(1) A company shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Act relating to the use of the word ‘limited’ or ‘teoranta’ as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this section) be subject to all the obligations of limited companies, where—

(a) its objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object, and

(b) its memorandum or articles of association—

(i) require its profits (if any) or other income to be applied to the promotion of its objects,

(ii) prohibit the payment of dividends to its members, and

(iii) require all the assets which would otherwise be available to its members to be transferred on its winding up to another company whose objects comply with paragraph (a) and which meets the requirements of this paragraph, and

(c) a director or secretary of the company (or, in the case of an association about to be formed as a limited company, one of the persons who are to be the first directors or the person who is to be the first secretary of the company) has delivered to the registrar of companies a statutory declaration in the prescribed form that the company complies or, where applicable, will comply with the requirements of paragraphs (a) and (b).

(2) The registrar shall refuse to register as a limited company any association about to be formed as a limited company by a name which does not include the word ‘limited’ or ‘teoranta’ unless a declaration as provided for under subsection (1)(c) has been delivered to the registrar.

(3) An application by a company registered as a limited company for a change of name including or consisting of the omission of the word ‘limited’ or ‘teoranta’ shall be made in accordance with section 23 and the registrar shall refuse to grant the application unless a declaration as provided for under subsection (1)(c) has been delivered to the registrar.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pr.10 S.88

(4) A company which is exempt under subsection (1) and whose name does not include the word 'limited' or 'teoranta' shall not alter its memorandum or articles of association so that it ceases to comply with the requirements of that subsection.

(5) If it appears to the registrar that a company which is registered under a name not including the word 'limited' or 'teoranta'—

(a) has carried on any business other than the promotion of any of the objects mentioned in subsection (1)(a),

(b) has applied any of its profits or other income otherwise than in promoting such objects, or

(c) has paid a dividend to any of its members,

the registrar may, in writing, direct the company to change its name within such period as may be specified in the direction so that its name ends with the word 'limited' or 'teoranta', and the change of name shall be made in accordance with section 23.

(6) A company which has received a direction under subsection (5) shall not thereafter be registered by a name which does not include the word 'limited' or 'teoranta' without the approval of the registrar.

(7) A person who—

(a) provides incorrect, false or misleading information in a statutory declaration under subsection (1)(c),

(b) alters its memorandum or articles of association in contravention of subsection (4), or

(c) fails to comply with a direction from the registrar under subsection (5),

shall be guilty of an offence.

(8) Summary proceedings in relation to an offence under subsection (7) may be brought and prosecuted by the registrar of companies.”.

(2) Notwithstanding the repeal effected by *subsection (1)*, a licence granted by the Minister pursuant to section 24(1) or (2) of the Act of 1963 as in force immediately before the commencement of this section shall continue to have effect, and subsections (4) to (7) of section 24 of that Act as then in force shall continue in force in relation to the licence, as if the section had never been repealed, except that references in those subsections to the Minister, wherever occurring, shall be construed as references to the registrar of companies.

Amendment of
section 60 of Act of
1963.

89.—Section 60 of the Act of 1963 is amended—

(a) in subsection (2), by the substitution of the following for paragraph (b):

“(b) the company has forwarded with each notice of the meeting at which the special resolution is to be

[2001.] *Company Law Enforcement Act, 2001.* [No. 28.]

considered or, if the procedure referred to in subsection (6) is followed, the company has appended to the resolution, a copy of a statutory declaration which complies with subsections (3) and (4) and also delivers, within 21 days after the date on which the financial assistance was given, a copy of the declaration to the registrar of companies for registration.”, Pr.10 S.89

and

(b) by the substitution of the following for subsection (6):

“(6) The special resolution referred to in subsection (1)(a) may be passed in accordance with section 141(8).”.

90.—Section 158 of the Act of 1963 is amended by the insertion of the following after subsection (6)— Amendment of section 158 of Act of 1963.

“(6A) The report referred to in subsection (1) shall contain a statement of the measures taken by the directors to secure compliance with the requirements of section 202 of the Companies Act, 1990, with regard to the keeping of proper books of account and the exact location of those books.”.

91.—Section 195 of the Act of 1963 is amended— Amendment of section 195 of Act of 1963.

(a) by the insertion of the following after subsection (7):

“(8) Without prejudice to subsection (7), if the notification to be sent to the registrar of companies pursuant to subsection (6) is a notification of the appointment of a person as a director of a company and that person is a person who 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, that person shall ensure that the notification is accompanied by (but as a separate document from the notification) a statement in the prescribed form signed by him specifying—

- (a) the jurisdiction in which he is so disqualified,
- (b) the date on which he became so disqualified, and
- (c) the period for which he is so disqualified.”,

and

(b) by the insertion of the following after subsection (10):

“(10A) Any member of a company or other person may require the company to supply to him a copy of the register required to be kept under this section, or any part of the register, on payment of 15p, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied. The company shall cause a copy so required by a person to be sent to the person within 10 days of the receipt by the

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pr.10 S.91

company of the request, and if it fails to do so it shall be guilty of an offence.”.

Amendment of
section 201 of Act
of 1963.

92.—Section 201 of the Act of 1963 is amended by the insertion of the following after subsection (6):

“(6A) For the avoidance of doubt, nothing in this section or sections 202 to 204 prejudices the jurisdiction of the Irish Takeover Panel under the Irish Takeover Panel Act, 1997, with respect to a compromise or scheme of arrangement that is proposed between a relevant company (within the meaning of that Act) and its members or any class of them and which constitutes a takeover within the meaning of that Act and, accordingly, the said Panel has, and shall be deemed always to have had, power to make rules under section 8 of the said Act in relation to a takeover of the kind aforesaid, to the same extent and subject to the like conditions, as it has power to make rules under that section in relation to any other kind of takeover.

(6B) The Irish Takeover Panel, in exercising its powers under the Irish Takeover Panel Act, 1997, and the High Court, in exercising its powers under this section and sections 203 and 204, shall each have due regard to the other’s exercise of powers under the said Act or those sections, as the case may be.”.

Amendment of
section 213 of Act
of 1963.

93.—Section 213 of the Act of 1963 is amended—

(a) in paragraph (f), by the insertion after “company” of “, other than an investment company within the meaning of Part XIII of the Companies Act, 1990, or the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989),”, and

(b) by the insertion of the following after paragraph (f):

“(fa) the court is of opinion that it is just and equitable that the company, being an investment company within the meaning aforesaid, should be wound up and the following conditions are complied with—

(i) in the case of an investment company within the meaning of Part XIII of the Companies Act, 1990—

(I) the petition for such winding-up has been presented by the trustee of the company, that is to say, the person nominated by the Central Bank of Ireland under section 257(4)(c) of the Companies Act, 1990, in respect of that company;

(II) the said trustee has notified the investment company of its intention to resign as such trustee and six or more months have elapsed since the giving of that notification without a trustee having been appointed to replace it;

[2001.] *Company Law Enforcement Act, 2001.* [No. 28.]

(III) the court, in considering the said Pr.10 S.93 petition, has regard to—

(A) any conditions imposed under section 257 of the Companies Act, 1990, in relation to the resignation from office of such a trustee and the replacement of it by another trustee; and

(B) whether a winding-up would best serve the interests of shareholders in the company;

and

(IV) the petition for such winding-up has been served on the company (if any) discharging, in relation to the first-mentioned company, functions of a company referred to in conditions imposed under section 257 of the Companies Act, 1990, as a ‘management company’;

and

(ii) in the case of an investment company within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989, such conditions as the Minister may prescribe by regulations;”.

94.—Section 215 of the Act of 1963 is amended—

Amendment of section 215 of Act of 1963.

(a) by the deletion of “and” where it occurs immediately before paragraph (f),

(b) in paragraph (f), by the substitution for “companies.” of “companies; and”, and

(c) by the insertion of the following after paragraph (f):

“(g) a petition for winding-up on the grounds mentioned in paragraph (fa) of section 213 shall be presented by the person referred to in subparagraph (i) of that paragraph or, as the case may be, the person specified in that behalf by regulations under subparagraph (ii) of that paragraph.”.

95.—Section 334(1) of the Act of 1963 is amended by the substitution for “Minister” (twice occurring) of “registrar of companies”.

Amendment of section 334 of Act of 1963.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pt.10

Amendment of
section 371 of Act
of 1963.

96.—Section 371 of the Act of 1963 is amended—

(a) in subsection (1), by the insertion after “by any member or creditor of the company” of “, by the Director”,

(b) in subsection (3), by the insertion after “penalties” of “(including restriction under section 150, or disqualification under section 160, of the Companies Act, 1990)”, and

(c) by the insertion of the following after subsection (3)—

“(4) In this section, ‘officer of a company’ and cognate words include a director, a shadow director, an officer, a promoter, a receiver, a liquidator or an auditor of a company.”.

New section 371A
of Act of 1963 —
Power to compel
compliance with
requirement made
under section
19(3)(b) of Act of
1990.

97.—The Act of 1963 is amended by the insertion of the following after section 371:

“371A.—(1) If a person having made default in complying with a requirement made of him under section 19(3)(b) of the Companies Act, 1990, fails to make good the default within 14 days after the service of a notice on him requiring him to do so, the court may, on an application made to the court by the Director, make an order directing the person to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the person who has made the default concerned.

(3) Nothing in this section shall be taken to prejudice the operation of section 19(6) of the Companies Act, 1990.”.

Repeal and
substitution of
section 381 of Act
of 1963 —
Improper use of
“limited” or
“teoranta”.

98.—Section 381 of the Act of 1963 is repealed and the following substituted:

“381.—(1) If any person or persons trade or carry on business under a name or title of which ‘limited’ or ‘teoranta’, or any contraction or imitation of either word, is the last word, that person or those persons shall be, unless duly incorporated with limited liability, guilty of an offence.

(2) If any person or persons, having committed an offence under subsection (1), fails within 14 days after the service of a notice on him or them to do so, to cease to so trade or carry on business, in breach of that subsection, the court may, on the application of the registrar of companies or the Director, make an order directing the person or persons to so cease within such time as may be specified in the order and the person or persons shall comply with the order.

(3) An order under subsection (2) may provide that all costs of and incidental to the application shall be borne by the person or persons against whom it is made.”.

Amendment of
section 392 of Act
of 1963.

99.—Section 392 of the Act of 1963 is amended by the insertion after “Houses of the Oireachtas” of “not later than 7 months after the end of the calendar year to which the report relates”.

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

100.—Section 383 of the Act of 1963 is repealed and the following substituted:

Pr.10
Repeal and
substitution of
section 383 of Act
of 1963.

“383.—(1) For the purpose of any provision of the Companies Acts which provides that an officer of a company who is in default shall be liable to a fine or penalty, an officer who is in default is any officer who authorises or who, in breach of his duty as such officer, permits, the default mentioned in the provision.

(2) For the purposes of this section, an officer shall be presumed to have permitted a default by the company unless the officer can establish that he took all reasonable steps to prevent it or that, by reason of circumstances beyond his control, was unable to do so.

(3) It is the duty of each director and secretary of a company to ensure that the requirements of the Companies Acts are complied with by the company.

(4) In this section ‘default’ includes a refusal or contravention.”.

101.—The Companies (Amendment) Act, 1982, is amended by the insertion of the following after section 3:

New section 3A of
Companies
(Amendment) Act,
1982 — Additional
statement to be
delivered to
registrar.

“3A.—(1) If any of the persons named in the statement to be delivered pursuant to section 3 of this Act as directors of the company concerned is a person who 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, that person shall ensure that that statement is accompanied by (but as a separate document from that statement) a statement in the prescribed form signed by him specifying—

- (a) the jurisdiction in which he is so disqualified,
- (b) the date on which he became so disqualified, and
- (c) the period for which he is so disqualified.

(2) This section is without prejudice to section 3(3) of this Act or the requirements of any other enactment with regard to the registration of companies.”.

102.—Section 30 of the Act of 1990 is amended by the insertion of the following after subsection (3):

Amendment of
section 30 of Act of
1990.

“(3A) Nothing in this section shall prevent a person from acquiring a right to shares in a company pursuant to a scheme approved by the Revenue Commissioners for the purposes of the Tax Acts and the Capital Gains Tax Acts, and in respect of which approval has not been withdrawn at the time the right is obtained.”.

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pt.10
Amendment of
section 110 of Act
of 1990.

103.—Section 110(1) of the Act of 1990 is amended by the insertion of the following after paragraph (b):

“(ba) acquiring a right to shares in a company pursuant to a scheme approved by the Revenue Commissioners for the purposes of the Tax Acts and the Capital Gains Tax Acts.”.

Amendment of
section 240 of Act
of 1990.

104.—Section 240 of the Act of 1990 is amended—

(a) by the substitution for “£1,000” (wherever occurring) of “£1,500”,

(b) in subsection (1)(b), by the substitution for “3 years” of “5 years”, and

(c) by the insertion of the following after subsection (6):

“(7) In any provision of the Companies Acts for which a fine of any amount of less than £1,500 is provided in respect of a summary conviction, the maximum amount of that fine shall be taken to be £1,500.

(8) In any provision of the Companies Acts for which a term of imprisonment of less than 5 years is provided in respect of a conviction on indictment, the maximum term of imprisonment shall be taken to be 5 years.”.

New section 240A
of Act of 1990 —
Court in which
proceedings for
certain offences
may be brought.

105.—The Act of 1990 is amended by the insertion of the following after section 240:

“240A.—For the purposes of any provision of the Companies Acts which provides that the company and every officer of the company is guilty of an offence, summary proceedings against the company or an officer of the company may be brought, heard and determined either—

(a) in the court area in which the offence charged or, if more than one offence is stated to have been committed, any one of the offences charged, is stated to have been committed,

(b) in the court area in which the accused has been arrested,

(c) in the court area in which the accused resides,

(d) in the court area specified by order made pursuant to section 15 of the Courts Act, 1971, or

(e) in the court area in which the registered office of the company is situated.”.

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

106.—Section 242(2) of the Act of 1990 is amended—

Pr.10

(a) by the substitution for “Where a person is guilty” of “Where a person is convicted on indictment”, and

Amendment of section 242 of Act of 1990.

(b) by the deletion of “on conviction on indictment”.

107.—(1) The Act of 1990 is amended by the insertion of the following after section 249:

New section 249A of Act of 1990 — Power to reject documents sent for registration and amendments consequential on that section’s insertion.

“249A.—(1) If a document is delivered to the registrar which does not comply with—

(a) the requirements of section 248 or 249,

(b) any other requirement of the Companies Acts (and in particular the provisions of the section or sections under which a requirement to deliver the document concerned to the registrar arises), or

(c) any requirements imposed by or under any other enactment relating to the completion of a document and its delivery to the registrar,

the registrar may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(2) Where the registrar serves such a notice, then, unless a replacement document—

(a) is delivered to him within 14 days after the service of the notice, and

(b) complies with the requirements referred to in subsection (1) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

(3) For the purposes of any provision which—

(a) imposes a penalty for failure to deliver a document, so far as it imposes a penalty for continued contravention, or

(b) provides for the payment of a fee in respect of the registration of a document being a fee of a greater amount than the amount provided under the provision in respect of the registration of such a document that has been delivered to the registrar within the period specified for its delivery to him,

no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after the service of the notice under subsection (1) (but only if, before the end of the latter period, a replacement document that complies with the requirements referred to in subsection (1) is delivered to the registrar).

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pr.10 S.107

(4) Nothing in this section shall have the effect of making valid any matter which a provision of the Companies Acts or of any other enactment provides is to be void or of no effect in circumstances where a document in relation to it is not delivered to the registrar within the period specified for the document's delivery to him."

(2) Subsections (3), (4) and (5) of section 248 and subsections (5), (6) and (7) of section 249 of the Act of 1990 are deleted.

Amendment of
section 258 of Act
of 1990.

108.—Section 258 of the Act of 1990 is amended—

- (a) by the insertion after "63," of "72(3)," and
- (b) by the insertion after "investment company" of " , or, in the case of the said Regulation 72(3), such a company other than one to which section 253(2A)(a) applies,".

Notice by Director
of intention to
prosecute.

109.—(1) Where the Director has reasonable grounds for believing that a person has committed an offence under the Companies Acts which is subject to summary prosecution, the Director may deliver to the person or, where the person believed to have committed the offence is a company, to an officer of the company, a notice in the prescribed form stating—

- (a) that the person or company is alleged to have committed that offence,
 - (b) that the person to whom the notice is delivered may during a period of 21 days beginning on the date of the notice—
 - (i) remedy as far as practicable to the satisfaction of the Director any default that constitutes the offence, and
 - (ii) make to the Director a payment of a prescribed amount which shall be accompanied by the notice,and
 - (c) that a prosecution of the person to whom the notice is delivered in respect of the alleged offence will not be instituted during the period specified in the notice or, if the default is remedied to the satisfaction of the Director and the payment specified in the notice is made during that period, at all.
- (2) Where a notice is given under subsection (1)—
- (a) a person to whom it applies may, during the period specified in the notice, make to the Director the payment 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 the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted at all.

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

(3) In a prosecution for an offence to which this section applies, the onus of showing that a payment pursuant to a notice under this section has been made shall lie on the defendant. Pr.10 S.109

(4) 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 Finance may direct.

110.—(1) In a trial on indictment of an offence under the Companies Acts, the trial judge may order that copies of any or all of the following documents be given to the jury in any form that the judge considers appropriate: Provision of information to juries.

- (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 the trial,
- (d) the transcript of the whole or any 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 be of assistance to the jury in its deliberations including, where appropriate, an affidavit by an accountant summarising, in a form which 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 mentioned 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 mentioned in *subsection (1)(f)* shall be given to the jury, he or she may in an appropriate case, with a view to further assisting the jury in its deliberations, require the accountant who prepared the affidavit to explain to the jury any relevant accounting procedures or principles.

111.—(1) None of the following—

- (a) section 32 or 60 of the Act of 1963,
- (b) Part XI of the Act of 1990, or
- (c) the European Communities (Public Limited Companies Subsidiaries) Regulations, 1997 (S.I. No. 67 of 1997),

Non-application of certain provisions concerning acquisition by subsidiary of shares in its holding company.

shall apply to the subscription by a subsidiary for, or the acquisition or holding by a subsidiary of, shares in its holding company if the subsidiary is a member of an approved stock exchange specified in section 17(2) of the Stock Exchange Act, 1995, acting in its capacity as a professional dealer in securities in the normal course of its business.

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pr.10 S.111

(2) In addition to the meaning assigned to it by section 155 of the Act of 1963, “subsidiary” in this section means a company or other body corporate referred to in paragraph (2) of Regulation 4 of the European Communities (Public Limited Companies Subsidiaries) Regulations, 1997 (S.I. No. 67 of 1997), which, by virtue of paragraph (1) of that Regulation, is deemed to be a subsidiary of a public limited company.

Amendment of
Freedom of
Information Act,
1997.

112.—The Freedom of Information Act, 1997, is amended—

(a) in section 46(1), by the insertion of the following after paragraph (b):

“(ba) a record held or created under the *Companies Acts, 1963 to 2001*, by the Director of Corporate Enforcement or an officer of the Director (other than a record concerning the general administration of the Director’s office),”

and

(b) in the First Schedule, by the insertion in paragraph 1(2) of “the Office of the Director of Corporate Enforcement.”

Amendment of
section 7A of
Bankers’ Books
Evidence Act, 1879.

113.—Section 7A (inserted by the Central Bank Act, 1989) of the Bankers’ Books Evidence Act, 1879, is amended by the insertion after “Superintendent” and “designated by him” of “or the Director of Corporate Enforcement” and “, or officer of the Director of Corporate Enforcement nominated by the Director, as the case may be”, respectively.

Amendment of
section 9 of
Consumer
Information Act,
1978.

114.—Section 9 of the Consumer Information Act, 1978, is amended by the substitution of the following for subsection (11):

“(11) (a) Where the Director is through illness or any other cause absent from duty or the office of Director is vacant, the Minister may appoint a person to perform the functions of the Director during such absence or vacancy.

(b) The Minister shall not appoint a person under paragraph (a) of this subsection to perform the functions of the Director for a continuous period of more than 6 months during a vacancy in the office of Director.

(c) The Minister may at any time terminate an appointment under paragraph (a) of this subsection.

(d) A person appointed under paragraph (a) of this subsection has all the powers, rights and duties conferred on the Director by this Act and each reference in this Act to the Director shall be deemed to include a reference to such a person.”

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

SCHEDULE

Section 14.

TRANSFER OF FUNCTIONS FROM MINISTER TO DIRECTOR

ACTS UNDER WHICH FUNCTIONS ARE TRANSFERRED

PART 1

Companies Act, 1963
(No. 33 of 1963)

Item	Section	Subsection(s)	Section Title
(1)	(2)	(3)	(4)
1	131	(3), (4), (6)	Annual general meeting
2	384	(1)	Production and inspection of books when offence suspected

PART 2

Companies Act, 1990
(No. 33 of 1990)

Item	Section	Subsection(s)	Section Title
(1)	(2)	(3)	(4)
3	11	(3)	Inspectors' report
4	12	(2)	Proceedings on inspectors' report
5	14	(1), (2), (5)	Appointment and power of inspectors to investigate ownership of company
6	15	(1)	Power to require information as to persons interested in shares or debentures
7	16	(1), (5), (6), (7), (8), (13), (16), (18)	Power to impose restrictions on shares or debentures
8	66	(1), (4), (5), (8)	Investigation of share dealing
9	85	(6)	Penalty for failure to provide information
10	94	(2)	Obligation of professional secrecy
11	116	(3)	Co-operation with other authorities outside the State
12	117	(1)	Authorised persons

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Item	Section	Subsection(s)	Section Title
13	118	(2)	Obligation of professional secrecy
14	160	(2)	Disqualification of certain persons from acting as directors or auditors of or managing companies
15	240	(4)	Offences