

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.

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(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

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- (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,

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(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

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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