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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

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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.

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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 neces-  
sary 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, sum-  
mon before it any officer of the company or per-  
son 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, deal-  
ings, 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, instru-  
ment, 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 pro-  
ceedings 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

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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

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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.

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(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.

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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.