

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):

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“(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;”

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(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

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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