

**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.

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

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- (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—

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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.

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- (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,