

Restriction Undertaking – Section 852 - Companies Act 2014

This is a new administrative procedure that provides the person with an opportunity to submit to a restriction without the need for a court hearing. The Director may, at his discretion, offer the director of an insolvent company an opportunity to submit to be restricted. The offer will include the circumstances, facts and allegations leading to the Director forming the belief that restriction is appropriate.

Where the person accepts the restriction, and returns the restriction acceptance document, duly signed, the Director will send details of the “restriction undertaking” to the Registrar of Companies, for inclusion in the register of restricted persons (Section 853).

Such a restriction prevents a person from being appointed or acting in any way, directly or indirectly as a director or secretary or being involved in the formation or promotion of any company unless it is adequately capitalised (Section 819(3)). In the case of a public limited company (other than an investment company), the capital requirement is €500,000 in allotted paid up share capital, and in the case of any other company, the capital requirement is €100,000. Such a company is also subject to stricter rules in relation to capital maintenance.

A person who continues in office as a director of a company on the restriction taking place without the company being adequately capitalised, will be deemed, without proof of anything more to have contravened the Companies Act and will be automatically disqualified as a director.