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# Part A8 – Receivers

## Contents of Part A8

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## Part A8 – Receivers

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### Chapter 1

#### Interpretation

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#### Head 1 Construction of references to receiver

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- (1) Unless the contrary intention appears-
- (a) any reference in this Bill to a receiver of the property of a company includes a reference to a receiver and manager of the property of a company and to a manager of the property of a company and includes a reference to a receiver or to a receiver and manager or to a manager, of part only of that property, and to a receiver only of the income arising from that property or from part thereof; and
  - (b) any reference in this Bill to the appointment of a receiver under powers contained in any instrument, includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.
- (2) The provisions of Part A11, Chapter 5 [equivalent of S.I. No.333 of 2002, EC (Corporate Insolvency) Regulations 2002] apply to proceedings under this Part.

#### **Explanatory note**

*This head is new.*

*Subhead (1) is a slightly amended re-enactment of Section 323 of the Companies Act, 1963. The opening phrase “It is hereby declared...” has been deleted in accordance with the views of the Company Law Review Group.*

*Subhead (2) is new. It applies the provisions of S.I. No.333 of 2002, EC (Corporate Insolvency) Regulations, 2002 to receiverships. This is also the current position as “insolvency proceedings” are interpreted as including receiverships for the purpose of the Regulations.*

## Chapter 2

### Appointment of Receivers

#### Head 2 Notification that receiver has been appointed

- (1) Where a receiver of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.
- (2) If default is made in complying with the requirements of this head, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver, shall be guilty of a category four offence.

#### **Explanatory note**

*This head is an amended re-enactment of Section 317 of the Companies Act, 1963. Default in complying with the requirements as to notification is now said to be an offence as opposed to merely resulting in a fine.*

#### Head 3 Information to be given when receiver is appointed

- (1) Where a receiver of the whole, or substantially the whole, of the property of a company (hereinafter in this Part referred to as “the receiver”) is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this head and Part A8 Head 4 [equivalent of Section 320 of the Companies Act, 1963] —
  - (a) the receiver shall forthwith send notice to the company of his appointment; and
  - (b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with Part A8, Head 4 [equivalent of Section 320 of the Companies Act, 1963] a statement in the prescribed form as to the affairs of the company; and

- (c) the receiver shall, within 2 months after receipt of the said statement, send to the Registrar, to the court, to the company, to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders, a copy of the statement and of any comments he sees fit to make thereon.
- (2) The receiver shall, within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months, and within one month after he ceases to act as receiver of the property of the company, send to the Registrar an abstract in the prescribed form, showing the assets of the company of which he has taken possession since his appointment, their estimated value, the proceeds of sale of any such assets since his appointment, his receipts and payments during that period of 6 months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.
- (3) Where a receiver ceases to act as receiver of the property of the company, the abstract under subhead (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 of Corporate Enforcement.
- (4) Where a receiver is appointed under the powers contained in any instrument, this head shall have effect with the omission of the references to the court in Subhead (1), and in any other case, references to the court shall be taken as referring to the court by which the receiver was appointed.
- (5) Subhead (1) shall not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver dying or ceasing to act, except that, where that Subhead applies to a receiver who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall (subject to Subhead (6)) include references to his successor and to any continuing receiver. Nothing in this subhead shall be taken as limiting the meaning of “the receiver” where used in or in relation to Subhead (2).

- (6) This head and Part A8, Head 4 [equivalent of Section 320 of the Companies Act, 1963], where the company is being wound up, shall apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (7) Nothing in Subhead (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that Subhead.
- (8) Where the Registrar becomes aware of the appointment of a receiver under this head, he shall forthwith inform the Director of Corporate Enforcement of the appointment.
- (9) If the receiver makes default in complying with this head, he shall be guilty of a category four offence.
- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) who are in the employment of the company or have been in the employment of the company within the said year, and are, in the opinion of the receiver, capable of giving the information required;
- (d) who are or have been within the said year, officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

### **Explanatory note**

*This section is a slightly amended re-enactment of section 319 of the Companies Act, 1963, as amended by section 52 of the Company Law Enforcement Act 2001. The numbering of the subheads, and the cross-references thereto, have been amended. References to the Director have been replaced by references to "the Director of Corporate Enforcement" throughout.*

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## **Head 4 Contents of statement to be submitted to receiver**

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- (1) The statement as to the affairs of a company required by Part A8, Head 3 [equivalent of Section 319 of the Companies Act, 1963] to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment, particulars of the company's assets, debts and liabilities, the names and residences of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.
- (2) The said statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are, at the date of the receiver's appointment, the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subhead mentioned as the receiver (or his successor), may require to submit and verify the statement, that is, persons—
- (3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.
- (4) Where the receiver is appointed under the powers contained in any instrument, this head shall have effect with the substitution for references to an affidavit, of references to a statutory declaration; and in any other case, references to the court shall be taken to refer to the court by which the receiver was appointed.
- (5) If any person to whom subhead (2) applies makes default in complying with the requirements of this head, he shall, unless he can prove to the satisfaction of the court that it was not possible for him to comply with the requirements of the head, be guilty of a category three offence.
- (6) References in this head to the receiver's successor shall include a continuing receiver.

### **Explanatory note**

*This head is an amended re-enactment of Section 320 of the Companies Act, 1963, as amended by Section 173 of the Companies Act, 1990. Subhead (5) has been amended insofar as it now refers to an offence generally.*

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## Head 5 Consequences of contravention of Heads 3 [equivalent of Section 319(1)(b) of the Companies Act, 1963] or 4 [equivalent of Section 320 of the Companies Act, 1963]

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Where, in contravention of Part A8, Head 3 (1) (b) [equivalent of Section 319(1)(b) of the Companies Act, 1963] and Part A8, Head 4 [equivalent of Section 320 of the Companies Act, 1963], a statement of affairs is not submitted to the receiver as required by those provisions, the court may, on the application of the receiver or any creditor of the company, and notwithstanding the provisions of Part A8, Head 4 (5) [equivalent of Section 320(5) of the Companies Act, 1963], make whatever order it thinks fit, including an order compelling compliance with Part A8, Head 3 [equivalent of Section 319 of the Companies Act, 1963] and Part A8, Head 4 [equivalent of Section 320 of the Companies Act, 1963].

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 320A of the Companies Act, 1963, as amended by Section 174 of the Companies Act, 1990. Cross-references to other heads have been updated in accordance with the structure of the Bill.*

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## Head 6 Disqualification of certain persons from acting as receiver

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- (1) None of the following persons shall be qualified for appointment as receiver of the property of a company—
- (a) an undischarged bankrupt;
  - (b) a person who is, or who has, within 12 months of the commencement of the receivership been, an officer or servant of the company;
  - (c) a parent, spouse, brother, sister or child of an officer of the company;
  - (d) a person who is a partner of, within the definition of Section (1) of the Partnership Act, 1890, or in the employment of an officer or servant of the company;

- (e) a person who is not qualified by virtue of this subhead for appointment as receiver of the property of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company;
- (f) a body corporate.

References in this subhead to an officer or servant of the company include references to an auditor.

- (2) If a receiver of the property of a company becomes disqualified by virtue of this head, he shall thereupon vacate his office and give notice in writing within 14 days to—
- (a) the company;
  - (b) the Registrar;
  - (c)
    - (i) the debenture-holder, if the receiver was appointed by a debenture-holder, or
    - (ii) the court, if the receiver was appointed by the court,

that he has vacated it by reason of such disqualification.

- (3) Subhead (2) is without prejudice to Part A8, Head 9 [equivalent of Section 107 of the Companies Act, 1963], Part A8, Head 3(2) [equivalent of Section 319(2) of the Companies Act, 1963] and Part A8, Head 14 [equivalent of the Section 321 of Companies Act, 1963].
- (4) Nothing in this head shall require a receiver appointed before 1 August 1991, to vacate the office to which he was so appointed.
- (5) Any person who acts as a receiver when disqualified by this head from so doing or who fails to comply with Subhead (2), if that Subhead applies to him, shall be guilty of a category two offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 315 of the Companies Act, 1963, as amended by Section 170 of the Companies Act, 1990. Cross-references to other heads have been updated in accordance with the structure of the Bill and references to the registrar of companies are replaced by references to the "Registrar".*

*Subhead (1)(f) has been newly inserted. This is taken in substance from Section 314 of the Companies Act, 1963.*

*Subsection (4) has been amended insofar as the specific date has now been inserted. [Query the possibility of a receiver appointed prior to 1991 still being active – if not, Section 6(4) would appear to be obsolete].*

*Subsection (5) has been amended insofar as it now refers to an offence generally.*

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### Head 7 Resignation of receiver

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- (1) A receiver of the property of a company, appointed under the powers contained in any instrument may resign, provided he has given one month's notice thereof to —
  - (a) the holders of floating charges over all or any part of the property of the company and the holders of any fixed charge over all or any part of the property of the company;
  - (b) the company or its liquidator.
- (2) A receiver appointed by the court may resign only with the authority of the court and on such terms and conditions, if any, as may be laid down by the court.
- (3) If any person makes default in complying with the requirements of this head, he shall be guilty of a category four offence.

#### **Explanatory note**

*This head is an amended re-enactment of Section 322C of the Companies Act, 1963, as inserted by section 177 of the Companies Act, 1990.*

*Subhead (1)(a) is a re-enactment of Sections 322C(1)(a) & (c) of the Companies Act, 1963. The Company Law Review Group noted that there was no reason to distinguish between holders of fixed and floating charges for the purpose of the receipt of notice in relation to the resignation of a receiver.*

*Subsection (3) has been amended insofar as it now refers to a categorised offence.*

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### Head 8 Removal of receiver

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- (1) The court may, on cause shown, remove a receiver and appoint another receiver.

- (2) Notice of such proceedings shall be served on the receiver and on the person who appointed him not less than 7 days before the hearing of such proceedings and, in any such proceedings, the receiver and the person who appointed him may appear and be heard.

#### **Explanatory note**

*This head is a re-enactment of Section 322A of the Companies Act, 1963, as inserted by Section 175 of the Companies Act, 1990.*

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### Head 9 Notice to Registrar of appointment of receiver, and of receiver ceasing to act

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- (1) If any person obtains an order for the appointment of a receiver of the property of a company or appoints such a receiver under any powers contained in any instrument, he shall, within 7 days after the date of the order or of the appointment, deliver to the Registrar, a notice in the form prescribed.
- (2) When any person appointed receiver of the property of a company ceases to act as such receiver, he shall, on so ceasing, deliver to the Registrar a notice in the form prescribed.
- (3) If any person makes default in complying with the requirements of this head, he shall be guilty of a category four offence .

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 107 of the Companies Act, 1963. References to the registrar of companies are replaced by references to the "Registrar" throughout the head and references to Iris Oifigiuil have been replaced with references to the "CRO Gazette".*

*Subsection (1) has been amended in accordance with the view of the Company Law Review Group. The requirement to publish a notice "...in at least one daily newspaper in the district in which the registered office is located" has been replaced by a requirement to simply publish the notice in the CRO Gazette. The reasons for this are the cost of publication; the inefficiency of the notice reaching the intended recipients; and the fact that the CRO Gazette will now be freely available on-line.*

*Subsection (3) has been amended insofar as it now refers to a categorised offence.*

## Chapter 3

### Powers and Duties of Receivers

#### Head 10 Powers of receiver

- (1) Subject to this head, a receiver of property of a company has power to do, in the State and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.
- (2) Without limiting the generality of Subhead(1), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a company has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed —
  - (a) to enter into possession and take control of property of the company in accordance with the terms of that order or instrument; and
  - (b) to lease, let on hire or dispose of property of the company; and
  - (c) to grant options over property of the company on such conditions as the receiver thinks fit; and
  - (d) to borrow money on the security of property of the company; and
  - (e) to insure property of the company; and
  - (f) to repair, renew or enlarge property of the company; and
  - (g) to convert property of the company into money; and
  - (h) to carry on any business of the company; and
  - (i) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the company; and
  - (j) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the company; and
  - (k) to draw, accept, make and indorse a bill of exchange or promissory note; and
  - (l) to use a seal of the company; and
  - (m) to engage or discharge employees on behalf of the company; and
  - (n) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver; and
  - (o) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person; and
  - (p) where a debt or liability is owed to the company to prove the debt or liability in a bankruptcy, insolvency or winding-up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement; and
  - (q) if the receiver was appointed under an instrument that created a charge on uncalled share capital of the company—
    - (i) to make a call in the name of the company for the payment of money unpaid on the company's shares, or
    - (ii) on giving a proper indemnity to a liquidator of the company to make a call in the liquidator's name for the payment of money unpaid on the company's shares; and
  - (r) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise; and
  - (s) to make or defend an application for the winding-up of the company; and
  - (t) to refer to arbitration, any question affecting the company.
- (3) The conferring, by this head, on a receiver, of powers in relation to property of a company, does not affect any rights in relation to that property of any other person other than the company.
- (4) In this head, a reference, in relation to a receiver to property of a company is, unless the contrary intention appears, a reference to the property of the company in relation to which the receiver was appointed.

### **Explanatory notes**

*This head is a new head introduced in accordance with the views of the Company Law Review Group.*

*The head is modeled on Section 420 of the Australian Corporations Law and gives certain specific powers to receivers in addition to those conferred on them by the court order or instrument under which they were appointed. Conferring statutory powers on receivers is intended to alleviate many of the problems which may arise from poorly drafted debentures.*

### **Head 11 Power of receiver to apply to the court for directions and his liability on contracts**

(1) Where a receiver of the property of a company is appointed under the powers contained in any instrument, any of the following persons may apply to the court for directions in relation to any matter in connection with the performance or otherwise, by the receiver, of his functions, that is to say—

- (a)
  - (i) the receiver,
  - (ii) an officer of the company,
  - (iii) a member of the company,
  - (iv) employees of the company comprising at least half in number of the persons employed in a permanent capacity by the company,
  - (v) a creditor of the company; and
- (b)
  - (i) a liquidator,
  - (ii) a contributory,

and on any such application, the court may give such directions, or make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(2) An application to the court under Subhead (1), except an application under paragraph (a)(i) of that Subhead, shall be supported by such evidence that the applicant is being unfairly prejudiced by any actual or proposed action or omission of the receiver as the court may require.

- (3) For the purposes of Subhead (1), 'creditor' means one or more creditors to whom the company is indebted by more, in aggregate, than €13,000.
- (4) A receiver of the property of a company shall be personally liable on any contract entered into by him in the performance of his functions, (whether such contract is entered into by him in the name of such company or in his own name as receiver or otherwise) unless the contract provides that he is not to be personally liable on such contract, and he shall be entitled in respect of that liability to indemnity out of the assets; but nothing in this subhead shall be taken as limiting any right to indemnity which he would have apart from this subhead,

or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

- (5) Where a receiver of the property of a company has been appointed or purported to be appointed and it is subsequently discovered that the charge or purported charge in respect of which he was so appointed or purported to be appointed, was not effective as a charge on such property or on some part of such property, the court may, if it thinks fit, on the application of such receiver, order that he be relieved wholly or to such extent as the court shall think fit, from personal liability in respect of anything done or omitted by him in relation to any property purporting to be comprised in the charge by virtue of which, he was appointed or purported to be appointed which if such property had been effectively included in such charge or purported charge, would have been properly done or omitted by him and he shall be relieved from personal liability accordingly, but in that event the person by whom such receiver was appointed or purported to be appointed shall be personally liable for everything for which, but for such order, such receiver would have been liable.
- (6) This head shall apply whether the receiver was appointed before, on, or after the 1st April 1964, but Subhead (4) shall not apply to contracts entered into before that date.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 316 of the Companies Act, 1963, as amended by Section 171 of the Companies Act, 1990. The numbering of the subsections, and the cross-references thereto, have been amended.*

*Subhead (1)(a)(iv) is an amended re-enactment of Section 316(1)(a)(iv) of the Companies Act, 1963. The reference to "...persons employed in a full-time capacity by the company" has been replaced by "...persons employed in a permanent capacity by the company" in accordance with the views of the Company Law Review Group.*

*Subhead (3) is an amended re-enactment of Section 316(1B) of the Companies Act, 1963. The specified debt has been converted to euro and rounded up to €13,000.*

*Subhead (6) is an amended re-enactment of Section 316(4) of the Companies Act, 1963. The reference to the operative date has been replaced by the specific date from the Companies Act, 1963.*

(b) In this subhead—

- (i) 'non-cash asset' and 'requisite value' have the meanings assigned to them by Part A5, Head 16 [equivalent of Section 29 of the Companies Act, 1990], and
- (ii) 'officer' includes a person connected, within the meaning of Part A5, Head 2 [equivalent of Section 26 of the Companies Act, 1990], with a director, a shadow director and a de facto director within the meaning Part A5, Head 3 [equivalent of Section 27 of the Companies Act, 1990] and Part A5, Head 4 [new] respectively.

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## **Head 12 Duty of receiver selling property to get best price reasonably obtainable**

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- (1) A receiver, in selling property of a company, shall exercise all reasonable care to obtain the best price reasonably obtainable for the property as at the time of sale.
- (2) Notwithstanding the provisions of any instrument—
  - (a) it shall not be a defence to any action or proceeding brought against a receiver in respect of a breach of his duty under Subhead (1) that the receiver was acting as the agent of the company or under a power of attorney given by the company; and
  - (b) notwithstanding anything in Part A8, Head 11 (4) [equivalent of Section 316(2) of the Companies Act, 1963], a receiver shall not be entitled to be compensated or indemnified by the company for any liability he may incur as a result of a breach of his duty under this head.
- (3)
  - (a) A receiver shall not sell by private contract a non-cash asset of the requisite value to a person who is, or who, within three years prior to the date of appointment of the receiver, has been, an officer of the company unless he has given at least 14 days' notice of his intention to do so to all creditors of the company who are known to him or who have been intimated to him.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 316A of the Companies Act, 1963, as inserted by Section 172 of the Companies Act, 1990. The cross-references have been amended in accordance with the structure of the Bill.*

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## **Head 13 Preferential payments when receiver is appointed under floating charge**

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- (1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not, at the time, in course of being wound up, the debts which in every winding-up are, under the provisions of Part A11 [equivalent of Part VI of the Companies Act, 1963] relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.
- (2) In the application of the said provisions Part A11, Head 58 [equivalent of Section 285 of the Companies Act, 1963] shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution, were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.

- (3) The periods of time mentioned in the said provisions of Part A11 [equivalent of Part VI of the Companies Act, 1963] shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.
- (4) Where the date referred to in Subhead (3) occurred before the 1st April 1964, Subheads (1) and (3) shall have effect with the substitution for references to the said provisions of Part A11 [equivalent of Part VI of the Companies Act, 1963] of references to the provisions which, by virtue of Part A11, Head 58 (11) [equivalent of Section 285(12) of the Companies Act, 1963] are deemed to remain in force in the case therein mentioned, and subhead (2) of this head shall not apply.
- (5) Any payments made under this head shall be recouped so far as may be out of the assets of the company available for payment of general creditors.

- (2) Every receiver who makes default in complying with this head shall be guilty of a category four offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 321 of the Companies Act, 1963. The cross-references have been amended in accordance with the structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar".*

*Subhead (2) has been amended insofar as it now refers to a categorised offence.*

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 98 of the Companies Act, 1963. The cross-references have been amended in accordance with the structure of the Bill and the "operative date" has been replaced with that specific date from the Companies Act, 1963.*

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## **Head 14 Delivery to Registrar of accounts of receiver**

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- (1) Except where Subhead (2) of Part A8, Head 3 [equivalent of Section 319 of the Companies Act, 1963] applies, every receiver of the property of a company shall, within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months, and within one month after he ceases to act as receiver, deliver to the Registrar for registration an abstract in the prescribed form showing the assets of the company of which he has taken possession since his appointment, their estimated value, the proceeds of sale of any such assets since his appointment, his receipts and his payments during that period of 6 months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all the preceding periods since his appointment.

## Chapter 4

### Regulation and Enforcement of Receivers

#### Head 15 Enforcement of duty of receiver to make returns

- (1) If any receiver of the property of a company—
- (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or
  - (b) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.

- (2) In the case of any such default as is mentioned in paragraph (a) of Subhead(1), an application for the purposes of this head may be made by any member or creditor of the company or by the Registrar, and in the case of any such default as is mentioned in paragraph (b) of that Subhead, the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver.
- (3) Nothing in this head shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in Subhead (1).

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 322 of the Companies Act, 1963. The reference to the registrar of companies has been replaced with a reference to the "Registrar".*

#### Head 16 Power of the court to order the return of assets which have been improperly transferred.

- (1) Where, on the application of a receiver, creditor or member of a company that is in receivership, it can be shown to the satisfaction of the court that —
- (a) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer, mortgage, security, loan, or in any way whatsoever whether by act or omission, direct or indirect; and
  - (b) the effect of such disposal was to perpetrate a fraud on the company, its creditors or members,

the court may, if it deems it just and equitable to do so, order any person who appears to have the use, control or possession of such property or the proceeds of the sale or development thereof to deliver it or pay a sum in respect of it to the receiver on such terms or conditions as the court sees fit.

- (2) Subhead (1) shall not apply to any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company to which Part A11, Head 43 (1) [equivalent of Section 286(1) of the Companies Act, 1963] applies.
- (3) In deciding whether it is just and equitable to make an order under this head, the court shall have regard to the rights of persons who have bona fide and for value acquired an interest in the property the subject of the application.

#### **Explanatory note**

*This head is a re-enactment of Section 139 of the Companies Act, 1990, as applied with modification by Section 178 of the Companies Act, 1990 to receivers. The reference to "contributory" in Subhead (1) has been replaced with "member". This is consistent with the similar provision in Part A11.*

### Head 17 Power of court to fix remuneration of receiver

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- (1) The Court may, on an application made to it by the liquidator of a company or by any creditor or member of the company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver of the property of the company notwithstanding that the remuneration of such receiver has been fixed by or under that instrument.
- (2) Subject to Subhead (3), the power of the court under Subhead (1) shall, where no previous order has been made in relation thereto under that Subhead—
  - (a) extend to fixing the remuneration for any period before the making of the order or the application therefore; and
  - (b) be exercisable notwithstanding that the receiver has died or ceased to act before the making of the order or the application therefore; and
  - (c) where the receiver has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed by the court for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.
- (3) The power conferred by paragraph (c) of Subhead (2) shall not be exercised in relation to any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.
- (4) The court may from time to time on an application made by the liquidator or by any creditor or member of the company or by the receiver, vary or amend an order made under Subhead (1).
- (5) This head shall apply whether the receiver was appointed before, on, or after the 1st April 1964 and to periods before, as well as to periods after, that date.
- (6) Nothing in this head shall affect a receiver's right to indemnity out of the assets of the company provided by Part A8, Head 11 [equivalent of Section 316 of the Companies Act, 1963].

#### **Explanatory note**

*This head is an amended re-enactment of Section 318 of the Companies Act, 1963. The references to the operative date have been replaced with references to specific dates.*

*Subhead (6) is new. It protects the receiver's right to an indemnity out of the assets of the company.*

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### Head 18 Court may end or limit receivership on application of liquidator

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- (1) On the application of the liquidator of a company that is being wound up (other than by means of a members' voluntary winding-up) and in respect of which a receiver has been appointed (whether before or after the commencement of the winding-up), the court may—
  - (a) order that the receiver shall cease to act as such from a date specified by the court, and prohibit the appointment of any other receiver; or
  - (b) order that the receiver shall, from a date specified by the court, act as such only in respect of certain assets specified by the court.

An order under this Subhead may be made on such terms and conditions as the court thinks fit.

- (2) The court may from time to time, on an application made either by the liquidator or by the receiver, rescind or amend an order made under Subhead (1).
- (3) A copy of an application made under this head shall be served on the receiver and on the person who appointed him not less than 7 days before the hearing of the application, and the receiver and any such party may appear before and be heard by the court in respect of the application.
- (4) Except as provided in Subhead (1), no order made under this head shall affect any security or charge over the undertaking or property of the company.

#### **Explanatory note**

*This head is a re-enactment of Section 322B of the Companies Act, 1963, as inserted by Section 176 of the Companies Act, 1990.*

## Head 19 Director of Corporate Enforcement may request production of receiver's books

- (1) The Director of Corporate Enforcement 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 of Corporate Enforcement has requested the production of a receiver's books for examination under Subhead (1), the receiver to whom the request is made shall furnish the books to the Director of Corporate Enforcement and answer any questions concerning the content of the books and the conduct of a particular receivership or receiverships, and give to the Director of Corporate Enforcement all assistance in the matter as the receiver is reasonably able to give.
- (3) A request under Subhead (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 a category three offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 323A of the Companies Act, 1963, as inserted by Section 53 of the Company Law Enforcement Act, 2001. References to the Director have been replaced by references to the "Director of Corporate Enforcement".*

## Head 20 Prosecution of criminal offences committed by officers and members of the company

- (1) If it appears to the receiver in the course of a receivership that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions [or the Director of Corporate Enforcement] shall furnish to the Director of Public Prosecutions [or the Director of Corporate Enforcement] such information and give to him 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 of Public Prosecutions [or the Director of Corporate Enforcement] may require.
- (2) If, where any matter is reported or referred to the Director of Public Prosecutions and the Director of Corporate Enforcement under this head, either the Director of Public Prosecutions or the Director of Corporate Enforcement considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of the receiver and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this Subhead, "agent" in relation to a company, shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (3) If any person fails or neglects to give assistance in the manner required by Subhead (2), the court may, on the application of the Director of Public Prosecutions or of the Director of Corporate Enforcement, direct that person to comply with the requirements of that Subhead, and where any such application is made in relation to a receiver the court may, unless it appears that the failure or neglect to comply was due to the receiver not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

### **Explanatory note**

*This head is new. It is, in substance, a slightly amended re-enactment of Section 299(2), (4) and (5) of the Companies Act, 1963 (as amended by Section 143 of the Companies Act, 1990 and Section 51 of the Company Law Enforcement Act 2001), as applied with modification by Section 179 of the Companies Act, 1990 to receivers.*

*Subhead (1) is an amended re-enactment of Section 299(2) of the Companies Act, 1963.*

*Subhead (2) is an amended re-enactment of Section 299(4) of the Companies Act, 1963.*

*Subhead (3) is an amended re-enactment of Section 299(5) of the Companies Act, 1963.*

*The numbering of the subsections has been updated and references to the Director have been replaced with references to the Director of Corporate Enforcement.*