



TECHNICAL RELEASE

COMPANIES ACT 2014

Receivers

Readers of this document should note that the interpretation of detailed provisions of the Companies Act, 2014, has yet to be tested in the Courts.

November 2015

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INTRODUCTION

1. The provisions of Part 8, Receivers, Companies Act, 2014, (“Part 8”) came into force on Monday, 1st June 2015.
2. This Technical Release summarises key changes made by Part 8 to previous company legislation which include
 - . expanded requirements applicable to company’s notification of receiver’s appointment
 - . statutory prescription of certain powers of the receiver
 - . ability of the High Court (“Court”) to order return of assets
 - . reporting of offences to the Director of Public Prosecutions
3. This Technical Release is intended to assist members in understanding the changes made to company legislation governing receivers. However, it does not purport to be a detailed analysis of the provisions of Part 8.
4. Statutory references are to the relevant sections of Part 8, unless otherwise indicated.

APPOINTMENT

5. The existing requirement that various company documents bear a notice that a receiver has been appointed is extended by *Section 429* to cover the company’s website and e-mails issued by it. If the receiver is appointed to the property of a company being wound up those circumstances must be specified in such notices.
6. The contents of the company statement of affairs, to be provided to the receiver within 14 days of appointment, is unchanged.

7. As in earlier legislation, *Section 433* lists the categories (unchanged) of persons who are disqualified – rather than qualified – to act as receiver.

RESIGNATION OR REMOVAL

8. *Sections 434* and *435* restate earlier legislation.

POWERS

9. Subject to any provision of the court order by which, or of the instrument under which, he or she is appointed, *Section 437(1)* provides the receiver “... has power to do, in the State and elsewhere, all things necessary or convenient to be done ...” to achieve the objectives of the receivership.
10. Additionally, following the recommendation of the Company Law Review Group, *Section 437(3)* lists various specific powers of the receiver, including the power to:
 - (i) enter into possession and take control of the company’s property;
 - (ii) borrow money on the security of property of the company;
 - (iii) carry on any business of the company;
 - (iv) engage or discharge employees;
 - (v) appoint an agent to do any business the receiver cannot do, or would not be expected to do, in person;
 - (vi) refer to arbitration or mediation any question affecting the company.
11. One or more of the receiver’s powers can be limited by a provision to that effect of the court order by which, or of the instrument under which, he or she is appointed (*Section 437(4)*).

DUTIES

12. The receiver continues to be obliged, when selling property of the company, to “... exercise all reasonable care to obtain the best price reasonably obtainable for the property as at the time of sale.”
(*Section 439(1)*).
13. As heretofore, if the company is not being wound up, *Section 440* requires the receiver appointed under a floating charge to pay out of the asset realisations, in priority to all other debts, those preferential debts specified in *Section 621, Part 11, Winding Up, Companies Act, 2014*.

ENFORCEMENT

14. Where “it deems it just and equitable to do so”, the Court can order the return to the receiver of company assets which were improperly transferred (*Section 443*).
15. “If it appears to the receiver...”, during the course of the receivership, that an officer, past officer, or a member, of the company “...has been guilty of any offence in relation to the company...”, the receiver must report (*Section 447*) the matter to the Director of Public Prosecution and to the Director of Corporate Enforcement (“DCE”).
16. If either Director initiates proceedings following receipt of such report, the receiver must “...give all assistance in connection with the prosecution which he or she is reasonably able to give”.
17. The obligation on the liquidator, if requested, to provide the books and records of the company, as well as his or her own books and records, to the DCE is extended by *Section 653* to the company’s receiver where one was appointed to the company prior to the winding up.