

# Insolvency Reforms Under Amended Companies Act

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ARTICLE

The Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024 (2024 Act) partially comes into force on 3 December 2024 under a recently published commencement order (Commencement Order).

The Act amends the Companies Act 2014 (2014 Act), introducing enhancements in corporate governance, company law administration, enforcement and supervision, and corporate insolvency. This article focuses on the insolvency-related provisions of the Act, highlighting key changes and their implications for companies and other affected parties.

### Liquidators

Under section 683 of the 2014 Act, a liquidator must apply for the restriction of each director of an insolvent company. The 2024 Act clarifies that the liquidator's obligation extends to defending any appeals against restriction orders in such applications.

Under the 2014 Act where it appears that any officer or member of a company is guilty of an offence in relation to the company, the liquidator must refer the matter to the Director of Public Prosecutions (DPP) and the Corporate Enforcement Authority (CEA). The 2024 Act obliges the liquidator to make this referral to the CEA as close in time as possible to when it is

reported to the DPP.

## Receivers

The Act introduces new requirements for receivers, including the mandatory disclosure of fees at the request of the company or its creditors. This amendment was introduced based on recommendations from the Company Law Review Group's (CLRG) 2019 report on the regulation of receivers. However, this provision is not included in the Commencement Order and will come into operation at a later date.

The following provisions in the Act relating to receivers come into effect on 3 December 2024:

a receiver has an entitlement to remuneration on the terms set out in the instrument appointing them, or otherwise agreed or fixed, and such an entitlement may be expressed as a relevant percentage, by reference to time spent in the conduct of the receivership, or by reference to any method or thing, and

where a court fixes the remuneration of the receiver, it shall have regard to the factors set out in the new section 444(2A) of the 2014 Act. These include the time properly required by the receiver in attending to the company's affairs, the complexity of the case, any exceptional responsibility imposed on the receiver in connection with the company's affairs; the effectiveness on the receiver's part in carrying out their duties, and the value and nature of the property concerned.

## Virtual meetings

In response to the COVID-19 pandemic, legislation was introduced on an interim basis, allowing companies to conduct general meetings and creditors' meetings virtually. That legislation is due to expire at the end of 2024, and so the Act inserts a new section 176A into the 2014 Act, allowing companies to hold hybrid or fully virtual general meetings, provided its constitution does not provide otherwise. This replicates the interim provisions on a permanent statutory basis.

However, the ability to hold creditors' meetings by electronic means, currently facilitated under the interim legislation, has not been extended under the Act.

## Involuntary strike-off

The Act provides for three additional grounds for involuntary strike-off by the Registrar of Companies (**Registrar**) and consequential amendments to the 2014 Act. Before the introduction of the 2024 Act, the Registrar could strike a company off the register, on one of six grounds set out in section 726 of the 2014 Act, including where the company failed to make an annual return. Those grounds have now been expanded to include a failure to deliver notice of change of registered office, absence of a recorded company secretary with the Companies Registration Office (CRO), and failure to file beneficial ownership information

with the Register of Beneficial Ownership (RBO). The 2024 Act updates 728 of the 2014 Act to provide that where a company is struck off for any of the three additional grounds, this will not make the company directors liable for disqualification.

Although the provision is not insolvency-focused, it is of note because the introduction of these additional grounds is significant, and companies will need to exercise diligence in corporate governance practices to ensure they comply and avoid the operational and administrative disruptions that follow from an involuntary strike-off.

## Small companies administrative rescue process (SCARP)

The Act introduces enhancements to SCARP intended to improve its effectiveness. It amends section 558A of the 2014 Act to include a new condition ensuring the 'rescue period' is clearly defined even in situations where the process adviser ceases to act, and no replacement is appointed. It also amends section 558C of the 2014 Act requiring the process adviser to consider the company's social and cultural importance when deciding on the company's prospect of survival. The Act also provides for increased transparency on the process adviser's fees and expenses, amending section 558ZY to allow the court to request a written report from the process adviser where they do not use the staff and facilities of the company to which they are appointed.

## Statutory forms

The Act introduces changes requiring the use of prescribed forms for special resolutions under section 198 of the 2014 Act and for Summary Approval Procedure (SAP) declarations. This is relevant for members' voluntary liquidations using the SAP process because of the requirement for the company directors to make a declaration of solvency and for the members to pass a special resolution resolving to wind up the company as a members' voluntary winding up, both of which must be filed with the CRO. The provisions requiring the use of prescribed forms are not included in the Commencement Order.

## Outlook

The new provisions' impact on companies will become clearer as they come into effect on 3 December 2024. We will continue to monitor developments relating to the Act, particularly around the use of statutory forms in members' voluntary liquidations. In the interim, should you wish to discuss any aspect of this article or the provisions of the Act in more detail, please contact [Fergus Doorly](#), [Barbara Galvin](#), or [Ruairi Rynn](#).

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