



Number 30 of 2021

Companies (Rescue Process for Small and Micro Companies) Act 2021



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**COMPANIES (RESCUE PROCESS FOR SMALL AND MICRO COMPANIES) ACT
2021**

CONTENTS

PART 1

GENERAL

Section

1. Short title and commencement
2. Definition

PART 2

RESCUE PROCESS FOR SMALL AND MICRO COMPANIES

3. Rescue process for small and micro companies

PART 3

MISCELLANEOUS AMENDMENTS OF COMPANIES ACT 2014

4. Amendment of section 2 of Principal Act
5. Amendment of section 511 of Principal Act
6. Amendment of section 587 of Principal Act
7. Amendment of section 610 of Principal Act
8. Amendment of section 627 of Principal Act
9. Amendment of section 666 of Principal Act
10. Amendment of section 667 of Principal Act
11. Amendment of section 668 of Principal Act
12. Amendment of section 690A of Principal Act

[No. 30.]

*Companies (Rescue Process for
Small and Micro Companies) Act 2021.*

[2021.]

ACTS REFERRED TO

Central Bank Act 1971 (No. 24)

Companies Act 2014 (No. 38)

Protection of Employees (Employers' Insolvency) Acts 1984 to 2020

Redundancy Payments Acts 1967 to 2014

Social Welfare Consolidation Act 2005 (No. 26)



Number 30 of 2021

**COMPANIES (RESCUE PROCESS FOR SMALL AND MICRO COMPANIES) ACT
2021**

An Act to amend the Companies Act 2014 to provide, in certain circumstances, for a rescue process for small and micro companies which are, or are likely to be, unable to pay their debts; and for related matters. [22nd July, 2021]

Be it enacted by the Oireachtas as follows:

PART 1

GENERAL

Short title and commencement

1. (1) This Act may be cited as the Companies (Rescue Process for Small and Micro Companies) Act 2021.
(2) This Act shall come into operation on such day or days as the Minister for Enterprise, Trade and Employment may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Definition

2. In this Act, “Principal Act” means the Companies Act 2014.

PART 2

RESCUE PROCESS FOR SMALL AND MICRO COMPANIES

Rescue process for small and micro companies

3. The Principal Act is amended by the insertion of the following Part after section 558—

“PART 10A

RESCUE PROCESS FOR SMALL AND MICRO COMPANIES

CHAPTER 1

*Interpretation***Interpretation (Part 10A)****558A.** (1) In this Part—

‘director’ includes a shadow director;

‘eligible company’ means a company which qualifies as—

(a) a small company in accordance with section 280A, or

(b) a micro company in accordance with section 280D;

‘excludable debt’ has the meaning assigned to it by section 558L(4);

‘interested party’, in relation to an eligible company, means—

(a) a creditor of the eligible company, or

(b) a member of the eligible company;

‘process adviser’ means—

(a) except as specified in paragraphs (b) and (c), a process adviser appointed by the directors of an eligible company by resolution mentioned in section 558E or 558ZX,

(b) in Chapter 2 of this Part, a process adviser acting under that Chapter, and

(c) in sections 558ZP, 558ZQ and 558ZAI and Chapter 11 of this Part—

(i) except where the context otherwise requires, a process adviser acting under Chapter 2 of this Part, or

(ii) a process adviser appointed by the directors of an eligible company by resolution mentioned in section 558E or 558ZX;

‘relevant court’, in relation to an eligible company, means, subject to section 558ZAF, the court determined by the process adviser under section 558H;

‘rescue period’, in relation to an eligible company, means the period—

(a) beginning with the passing of the resolution mentioned in section 558E(2) appointing a process adviser in respect of the eligible company, and

(b) ending on—

- (i) the date on which the appointment of the process adviser is terminated under section 558ZK, or
- (ii) in a case where the process adviser resigns and the directors of the eligible company do not appoint another process adviser, the date on which the process adviser resigns;

‘rescue plan’ has the meaning assigned to it by section 558B.

- (2) For the purposes of sections 558Q, 558Y, 558Z and 558ZD, a member’s claim against an eligible company is impaired if—
 - (a) the nominal value of his or her shareholding in the eligible company is reduced,
 - (b) where the member is entitled to a fixed dividend in respect of his or her shareholding in the eligible company, the amount of that dividend is reduced,
 - (c) the member is deprived of all or any part of the rights accruing to him or her by virtue of his or her shareholding in the eligible company,
 - (d) the percentage of his or her interest in the total issued share capital of the eligible company is reduced, or
 - (e) the member is deprived of his or her shareholding in the eligible company.
- (3) For the purposes of sections 558Q, 558Y, 558Z and 558ZD, a creditor’s claim against an eligible company is impaired if the creditor receives less in payment of his or her claim than the full amount due in respect of the claim at the date of passing of the resolution for the appointment of the process adviser.

CHAPTER 2

Introductory

Requirements where eligible company wishes to avail of rescue plan

558B. (1) This section applies where—

- (a) the conditions specified in subsection (2) are met in relation to an eligible company, and
 - (b) the directors of the eligible company wish to avail of a rescue plan.
- (2) The conditions referred to in subsection (1) are—
- (a) the eligible company is, or is likely to be, unable to pay its debts,
 - (b) no resolution subsists for the winding up of the eligible company,
 - (c) no order has been made for the winding up of the eligible company,

- (d) the directors of the eligible company have not passed a resolution for the appointment of a process adviser in respect of the eligible company during the period of 5 years ending on the date on which it is proposed that such a resolution be passed by the eligible company,
 - (e) no examiner has been appointed to the eligible company during the period of 5 years referred to in paragraph (d).
- (3) For the purposes of subsection (2)(a), an eligible company is unable to pay its debts if—
- (a) it is unable to pay its debts as they fall due,
 - (b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or
 - (c) the circumstances set out in section 570(a), (b) or (c) are applicable to the eligible company.
- (4) A director of the eligible company shall—
- (a) make a full inquiry into the affairs of the eligible company,
 - (b) prepare in the prescribed form a statement specifying the information set out in subsection (5),
 - (c) by statutory declaration confirm that he or she has complied with paragraph (a), and
 - (d) submit the statement and the statutory declaration to a process adviser.
- (5) The information referred to in subsection (4)(b) is—
- (a) particulars of the eligible company's assets, debts and liabilities,
 - (b) the names and addresses of the eligible company's creditors,
 - (c) particulars of each security given by the eligible company, including the name of the secured creditor and the date on which it was given, and
 - (d) such further or other information as may be prescribed.
- (6) Where any false or misleading statement has been included in the statement of affairs referred to in subsection (4), any director of the eligible company who is in default shall be guilty of a category 2 offence.
- (7) In any proceedings against a person in respect of an offence under subsection (6), it shall be a defence to prove that, having exercised all reasonable skill and care, the defendant had reasonable grounds for believing and did, up to the time of the issue of the document concerned, believe that the statement concerned was true.

- (8) In this section, ‘rescue plan’ means a plan for an eligible company under this Part that is intended to secure the survival of the company, and the whole or any part of its undertaking, as a going concern.

Process adviser to determine whether eligible company has reasonable prospect of survival

558C. (1) This section applies where a director of an eligible company submits a statement and a statutory declaration to a process adviser under section 558B(4).

- (2) The process adviser shall determine whether there is a reasonable prospect of the survival of the eligible company, and the whole or any part of its undertaking, as a going concern.

- (3) In making a determination under subsection (2), the process adviser shall have regard to—

- (a) the statement, and
- (b) such of the matters specified in subsection (4) as appear to the process adviser to be relevant in the circumstances.

- (4) The matters referred to in subsection (3) are—

- (a) the nature of, and prospects for, the business of the eligible company,
- (b) the availability of funding for, and investment in, the eligible company in the future, including expressions of interest by external funders,
- (c) the cost structure of the eligible company, including any cost reductions already achieved or that may be achieved,
- (d) whether projections and business plans for the eligible company are based on objective and independent evidence,
- (e) whether the eligible company can generate a sufficient return to remunerate investment and repay funding,
- (f) the wider economic situation,
- (g) the circumstances of the market in which the eligible company is operating, including the likely future prospects of the market,
- (h) the expertise, brand and historic success of the eligible company,
- (i) where the eligible company is part of a group of companies, the place of the company in the structure of the group and its prospects in that context,
- (j) whether a secured creditor has expressed an interest in (or attempted to initiate) a trading receivership,

- (k) such other matters as the process adviser considers relevant in the circumstances.
- (5) The process adviser shall—
 - (a) hold a meeting with the directors of the eligible company for the purpose of informing the directors of the determination and the reasons for it, and
 - (b) give the directors of the eligible company confirmation in writing of the determination and the reasons for it.

Process adviser to prepare report

- 558D.** (1) This section applies where the process adviser determines under section 558C that there is a reasonable prospect of the survival of the eligible company, and the whole or any part of its undertaking, as a going concern.
- (2) The process adviser shall—
 - (a) prepare a report relating to the eligible company specifying the matters set out in subsection (3), and
 - (b) submit a copy of the report to the directors of the eligible company.
 - (3) The matters referred to in subsection (2)(a) are—
 - (a) that the company is an eligible company which meets the conditions in section 558B(2),
 - (b) the names and addresses of the officers of the eligible company,
 - (c) the names of any other bodies corporate of which the directors of the eligible company are also directors,
 - (d) a statement as to the affairs of the eligible company, showing—
 - (i) in so far as it is reasonably practicable to do so, particulars of the eligible company's assets and liabilities (including contingent and prospective liabilities) as at the latest practicable date,
 - (ii) the names and addresses of its creditors,
 - (iii) the securities held by each of them, and
 - (iv) the dates when the securities were given to each of them,
 - (e) the process adviser's opinion as to whether any deficiency between the assets and liabilities of the eligible company has been satisfactorily accounted for or, if not, as to whether there is evidence of a substantial dissipation of property that is not adequately accounted for,

- (f) a statement of the conditions or other matters which the process adviser considers are essential to ensure that the eligible company, and the whole or any part of its undertaking, would have a reasonable prospect of survival as a going concern, whether as regards the internal management and controls of the company or otherwise,
- (g) the process adviser's opinion as to whether the preparation, approval and taking effect of a rescue plan would offer a reasonable prospect of the survival of the eligible company, and the whole or any part of its undertaking, as a going concern,
- (h) the process adviser's opinion as to whether an attempt to continue the whole or any part of the undertaking would be likely to be more advantageous to the members as a whole and the creditors as a whole than a winding up of the eligible company,
- (i) recommendations as to the course the process adviser thinks should be taken and the matters the process adviser thinks should be taken into account in relation to the eligible company including, if warranted, a draft of a rescue plan,
- (j) details of the extent of the funding required to enable the eligible company to continue trading during the rescue period and the sources of that funding,
- (k) the process adviser's recommendations as to which liabilities incurred before the appointment of a process adviser should be paid,
- (l) information about how this Part operates and its general effect, including information about the process of appointing a process adviser and potential costs and fees,
- (m) the process adviser's recommendation as to which court should be the relevant court for the purposes of any proceedings under this Part relating to the eligible company,
- (n) such other matters as the process adviser thinks relevant, and
- (o) such other matters as may be prescribed.

CHAPTER 3

Appointment of process adviser

Resolution to appoint process adviser

558E. (1) This section applies where a process adviser submits a report under section 558D(2)(b) to the directors of an eligible company.

- (2) The directors of the eligible company may call a meeting of its board of directors at which a resolution to appoint a process adviser in respect of the eligible company shall be proposed and considered.
- (3) Any meeting called under subsection (2) shall be held before the expiry of the period of 7 days beginning on the date on which the directors of the eligible company receive the process adviser's report.

Process adviser's duty to keep determination under section 558C under review

- 558F.** (1) This section applies where a process adviser is appointed in respect of an eligible company and is without prejudice to section 558S(2).
- (2) The process adviser shall keep under review during the rescue period the determination made in relation to the eligible company under section 558C.
 - (3) If, at any time during the rescue period, the process adviser determines, having regard to the matters specified in subsection (4), that there is no longer a reasonable prospect of the survival of the eligible company, and the whole or any part of its undertaking, as a going concern, the process adviser shall immediately—
 - (a) give notice of the determination to the directors of the eligible company, and
 - (b) resign as process adviser in respect of the eligible company in accordance with section 558ZW.
 - (4) The matters referred to in subsection (3) are—
 - (a) any material change in the circumstances of the eligible company,
 - (b) the discovery of any material inaccuracy in the information provided to the process adviser that was relied upon for the determination under section 558C, or
 - (c) such other matter as the process adviser considers relevant.

Duties of directors of eligible company in relation to process adviser

- 558G.** (1) This section applies where a process adviser is appointed in respect of an eligible company.
- (2) Where the process adviser gives notice to the directors of the eligible company under section 558F, the directors shall, as soon as reasonably practicable after the notice is given, take such steps as they consider appropriate for the purpose of protecting the interests of employees of the company.
 - (3) During the rescue period, the directors of the eligible company shall—

- (a) co-operate with the process adviser for any purpose relating to the performance by the process adviser of his or her functions under this Part, and
- (b) without prejudice to any other requirement imposed on them by or under this Part, disclose to the process adviser any information relating to the performance of those functions that is available to them.

Process adviser's duty to determine relevant court

- 558H.** (1) This section applies where a process adviser is appointed in respect of an eligible company.
- (2) The process adviser shall, having regard to the matters mentioned in subsection (3), determine whether any proceedings under this Part relating to the eligible company shall be brought in the Circuit Court or the High Court.
 - (3) The matters referred to in subsection (2) are—
 - (a) the need to minimise costs by refraining from bringing proceedings in the High Court unless there are good reasons for doing so,
 - (b) the need for an efficient and expeditious conclusion to any proceedings brought under this Part, and
 - (c) any other relevant matter.
 - (4) Before making a determination under subsection (2), the process adviser shall consult the directors of the eligible company.
 - (5) The jurisdiction of the Circuit Court under this Part in relation to an eligible company shall be exercisable by a judge of the Circuit Court—
 - (a) for the circuit in which the registered office of the eligible company is situated at the time of the appointment of the process adviser or in which it has, at that time, its principal place of business, or
 - (b) if, at that time, there is no registered office of the eligible company and its principal place of business is outside the State, for the Dublin Circuit.

Process adviser's duty to seek provision of email addresses

- 558I.** (1) This section applies where a process adviser is appointed in respect of an eligible company by virtue of the passing of a resolution referred to in section 558E(2).
- (2) As soon as practicable after the appointment, the process adviser shall give to each person specified in subsection (3) a notice in writing—
 - (a) requesting that the person provide the process adviser with an email address that the process adviser may use for the purpose of giving

the person any notices and other documents that the process adviser is required or authorised to give to the person under this Part, and

- (b) informing each such person that, if no email address is provided, the process adviser shall give the person those notices and other documents by sending them by post in accordance with section 558ZAI.
- (3) Notice under subsection (2) shall be given—
 - (a) where the process adviser is aware of the person’s email address, by electronic means to that email address, or
 - (b) in any other case, in accordance with section 558ZAI(4).
- (4) The persons are—
 - (a) employees of the eligible company,
 - (b) members of the eligible company,
 - (c) creditors of the eligible company,
 - (d) the Revenue Commissioners, and
 - (e) such other persons as may be prescribed.
- (5) The process adviser shall keep records and supporting evidence of the means by which notice is given under this section.

Process adviser to give notice of appointment

- 558J.** (1) This section applies where a process adviser is appointed in respect of an eligible company by virtue of the passing of a resolution referred to in section 558E(2).
- (2) The process adviser shall, as soon as practicable and in any event no later than 2 working days after the passing of the resolution—
 - (a) deliver to the Registrar a notice of his or her appointment in the prescribed form, and
 - (b) file with the office of the relevant court a copy of—
 - (i) the resolution,
 - (ii) the process adviser’s determination made under section 558C and his or her report prepared under section 558D, and
 - (iii) where a process adviser has determined under section 558H(2) that proceedings under this Part in relation to an eligible company should be brought in the High Court, the reasons for the determination,
- and

- (c) make arrangements for a notice of his or her appointment and the date of that appointment to be published in *Iris Oifigiúil*.
- (3) The directors of the eligible company shall ensure that, within 48 hours after the passing of the resolution, a notice in the prescribed form stating that the process adviser has been appointed and the date of the appointment is placed on any website of the company in a prominent and easily accessible place.
- (4) The directors of the eligible company shall ensure that the notice referred to in subsection (3) remains on the website during the rescue period.
- (5) The process adviser shall keep records and supporting evidence of the means by which he or she has complied with the requirement imposed by subsection (2)(c).
- (6) A person who fails to comply with a requirement imposed by this section shall be guilty of a category 3 offence.

Process adviser to give notice to employees, creditors, etc.

- 558K.** (1) This section applies where a process adviser is appointed in respect of an eligible company by virtue of the passing of a resolution referred to in section 558E(2).
- (2) The process adviser shall, as soon as practicable and in any event no later than 5 days after the passing of the resolution, give to the persons specified in subsection (3)—
 - (a) a notice in the prescribed form setting out—
 - (i) the fact of his or her appointment as process adviser and the date of the passing of the resolution in respect of same,
 - (ii) any payments that the process adviser considers are required to be made in order for the eligible company to continue trading,
 - (iii) the fact that any liabilities arising after the appointment of the process adviser that are properly incurred by the process adviser under this Part shall be paid in full, and
 - (iv) the determination made under section 558H(2) as to whether any proceedings shall be brought in the Circuit Court or the High Court, as the case may be,
 - (b) in a case where the person is a creditor of the eligible company, a notice requiring the person to provide the process adviser with information about the matters set out in subsection (4),
 - (c) in a case where the person is a party to a contract to which section 558P applies and the process adviser is considering repudiating the contract, a statement of that fact, and

- (d) copies of—
 - (i) the determination made under section 558C and the report prepared under section 558D, and
 - (ii) such other documents as may be prescribed.
- (3) The persons referred to in subsection (2) are—
 - (a) employees of the eligible company,
 - (b) creditors of the eligible company,
 - (c) the Revenue Commissioners, and
 - (d) such other persons as may be prescribed.
- (4) The matters referred to in subsection (2)(b) are—
 - (a) the nature of the person's claim,
 - (b) the nature of any evidence supporting the claim,
 - (c) any credit terms offered by the person to the eligible company,
 - (d) any security held by the person over any assets of the eligible company,
 - (e) any related party transactions with the eligible company,
 - (f) any other matter that the person considers to be relevant for the purposes of the preparation of a rescue plan in accordance with section 558Q, and
 - (g) such other matters as may be prescribed.
- (5) The process adviser shall keep records and supporting evidence of the means by which notice is given under this section.
- (6) A process adviser who fails to comply with any requirement imposed by this section shall be guilty of a category 3 offence.
- (7) In this section, 'related party transaction' means a transaction between an eligible company and its related party.

Notice to creditor where eligible company has excludable debt

558L. (1) This section applies where—

- (a) a process adviser is appointed in respect of an eligible company by virtue of the passing of a resolution referred to in section 558E(2), and
 - (b) the eligible company has an excludable debt.
- (2) As soon as practicable after the passing of the resolution, the process adviser shall give a notice to the creditor concerned requiring the creditor to inform the process adviser, within 14 days after the giving

of the notice, if the creditor objects to the inclusion of the excludable debt in the rescue plan on any of the grounds specified in subsection (3).

- (3) The grounds are—
- (a) the eligible company has failed at any time to comply with a requirement relating to tax imposed by or under—
 - (i) this Act, or
 - (ii) any other enactment,
 - (b) the Revenue Commissioners are conducting an audit or intervention into the eligible company,
 - (c) the eligible company is a party to an appeal in relation to a requirement relating to tax imposed by this Act or any other enactment, or
 - (d) such other ground as may be prescribed.
- (4) In this section, ‘excludable debt’, in relation to an eligible company, means—
- (a) any liability of the eligible company arising out of any tax, duty, levy or other charge of a similar nature owed or payable to the State,
 - (b) any debt or liability of the eligible company arising under the Redundancy Payments Acts 1967 to 2014,
 - (c) any debt or liability of the eligible company arising under the Protection of Employees (Employers’ Insolvency) Acts 1984 to 2020,
 - (d) any debt or liability of the eligible company arising under the Social Welfare Consolidation Act 2005, or
 - (e) any debt or liability of the eligible company arising under such other enactment as may be prescribed.

Relevant court’s powers where receiver or provisional liquidator previously appointed

- 558M.** (1) This section applies where a process adviser is appointed in respect of an eligible company by virtue of the passing of a resolution referred to in section 558E(2).
- (2) Subsection (3) applies where, at the date of the passing of the resolution—
- (a) a receiver stands appointed to the whole or any part of the property or undertaking of the eligible company, but

- (b) the receiver has not stood so appointed for a continuous period of 3 working days or more.
- (3) On an application by the eligible company or the process adviser for direction as to the effect of the appointment of the process adviser on the appointment of the receiver, the relevant court (or, if the receiver was appointed by the High Court, the High Court only) may make such order as it thinks fit, including an order as to any or all of the following matters:
 - (a) that the receiver shall cease to act as such from a date specified by the relevant court;
 - (b) that the receiver shall, from a date specified by the relevant court, act as such only in respect of certain assets specified by the relevant court;
 - (c) directing the receiver to deliver all books, papers and other records, which relate to the property or undertaking of the eligible company (or any part of it) and are in his or her possession or control, to the process adviser within a period to be specified by the relevant court;
 - (d) directing the receiver to give the process adviser full particulars of all his or her dealings with the property or undertaking of the eligible company.
- (4) The relevant court shall not make an order under subsection (3)(a) or (b) unless the relevant court is satisfied that there is a reasonable prospect of the survival of the eligible company, and the whole or any part of its undertaking, as a going concern.
- (5) Where the relevant court makes an order under subsection (3), it may, for the purpose of giving full effect to the order, include such conditions in the order and make such ancillary or other orders as it deems fit.
- (6) Subsection (7) applies where, at the date of the passing of the resolution, a provisional liquidator stands appointed to the eligible company.
- (7) On an application by the eligible company or the process adviser for direction as to the effect of the appointment of the process adviser on the appointment of the provisional liquidator, the High Court may make such order as it thinks fit, including an order as to any or all of the following matters—
 - (a) that the provisional liquidator shall cease to act as such from a date specified by the High Court,
 - (b) directing the provisional liquidator to deliver all books, papers and other records, which relate to the property or undertaking of the

eligible company (or any part of it) and are in his or her possession or control, to the process adviser within a period to be specified by the High Court,

- (c) directing the provisional liquidator to give the process adviser full particulars of all his or her dealings with the property or undertaking of the eligible company.
- (8) The High Court shall not make an order under subsection (7), unless the High Court is satisfied that there is a reasonable prospect of the survival of the eligible company, and the whole or any part of its undertaking, as a going concern.
- (9) Where the High Court makes an order under subsection (7), it may, for the purpose of giving full effect to the order, include such conditions in the order and make such ancillary or other orders as it deems fit.
- (10) An application under this section shall be made on notice to the creditors of the eligible company.
- (11) Where the receiver was appointed by the High Court, references in subsections (3) to (5) to the relevant court shall be construed as references to the High Court.

Relevant court's power to stay proceedings or restrain further proceedings

558N. (1) This section applies where a process adviser is appointed in respect of an eligible company.

- (2) Where the relevant court is satisfied that, having regard to the report prepared under section 558D and such other matters as it sees fit, there is a reasonable prospect of the survival of the eligible company, and the whole or any part of its undertaking, as a going concern, it may, on the application of any of the persons specified in subsection (3)—
 - (a) stay all proceedings or restrain any further proceedings against the eligible company for the relevant period on such terms as seem just, or
 - (b) order that the provisions set out in subsection (4), or such other provision as the relevant court may specify, shall have effect in relation to the eligible company for the relevant period.
- (3) The persons referred to in subsection (2) are—
 - (a) the eligible company,
 - (b) the directors of the eligible company, and
 - (c) the process adviser.
- (4) The provisions referred to in subsection (2)(b) are as follows, namely:

- (a) no proceedings for the winding up of the eligible company may be commenced or resolution for winding up passed in relation to the company and any resolution so passed shall have no effect;
 - (b) no receiver over any part of the property or undertaking of the eligible company shall be appointed or, if a receiver has been so appointed before the appointment of the process adviser in respect of the company, the receiver shall, subject to any order under section 558M, cease to act;
 - (c) no attachment, sequestration, distress or execution shall be put into force against the property or effects of the eligible company, except with the consent of the process adviser;
 - (d) where any claim against the eligible company is secured by a mortgage, charge, lien or other encumbrance or a pledge of, on or affecting the whole or any part of the property, effects or income of the company, no action may be taken to realise the whole or any part of that security, except with the consent of the process adviser;
 - (e) no steps may be taken to repossess goods in the eligible company's possession under any hire-purchase agreement (within the meaning of section 558ZV), except with the consent of the process adviser;
 - (f) where, by or under any enactment, rule of law or otherwise, any person other than the eligible company is liable to pay all or any part of the debts of the company—
 - (i) no attachment, sequestration, distress or execution shall be put into force against the property or effects of such person in respect of the debts of the eligible company, and
 - (ii) no proceedings of any sort may be commenced against such person in respect of the debts of the eligible company;
 - (g) no order for relief shall be made under section 212 against the eligible company in respect of complaints as to the conduct of the affairs of the company or the exercise of the powers of the directors—
 - (i) prior to the passing of the resolution appointing the process adviser in respect of the eligible company, or
 - (ii) on or after the passing of such resolution;
 - (h) no proceedings for the appointment of an examiner to the eligible company may be brought.
- (5) An application under subsection (2) shall be made on notice to all interested parties and other persons directly affected.
- (6) The relevant court shall not stay or restrain proceedings or make an order under subsection (2) without having afforded each creditor of the

eligible company who has indicated to the court his or her desire to be heard in the matter an opportunity to be so heard.

- (7) In this section, ‘relevant period’, in relation to an eligible company, means—
- (a) the rescue period, or
 - (b) such other period as the relevant court sees fit.

Requirements following giving of notice to creditor under section 558K

- 558O.** (1) This section applies where the process adviser appointed in respect of an eligible company gives a creditor of the company a notice under section 558K(2)(b).
- (2) Where the creditor receives the notice, he or she shall—
- (a) within 7 days of receipt of the notice, acknowledge receipt of such notice in writing, and
 - (b) within 14 days of receipt of the notice, provide the process adviser with the information required by the notice.
- (3) Where a creditor fails to comply with subsection (2)(a), the process adviser shall give a notice (a ‘reminder notice’) to the creditor requiring the creditor, within 72 hours of receipt of the reminder notice, to acknowledge receipt of the notice given under section 558K(2)(b).
- (4) Where a creditor fails to comply with a reminder notice, the creditor shall be deemed to have received the notice given under section 558K(2)(b).
- (5) Where a creditor fails to comply with subsection (2)(b), the process adviser shall—
- (a) estimate the value of the creditor’s claim (any such value being referred to in this subsection as ‘the estimated value’), and
 - (b) give a notice to the creditor—
 - (i) specifying the estimated value, and
 - (ii) informing the creditor that, unless the creditor supplies the process adviser with the information required by the notice under subsection (2)(b) within 72 hours after the giving of the notice under this subsection, the estimated value may be used by the process adviser for the purposes of preparing a rescue plan under section 558Q.
- (6) In estimating the value of a claim under subsection (5)(a), the process adviser shall take into account any information relating to the claim

contained in the books and documents of the eligible company that are available to him or her.

- (7) The process adviser shall keep records and supporting evidence of the means by which a reminder notice was given.
- (8) A person who fails to comply with subsection (3) or (7) shall be guilty of a category 3 offence.

Repudiation, affirmation and variation of certain contracts

558P. (1) This section applies where—

- (a) a process adviser is appointed in respect of an eligible company, and
 - (b) the eligible company is a party to a contract (a ‘relevant contract’) under which some element of performance other than payment remains to be rendered both by the company and the other contracting party or parties (such party or parties being referred to in this section as the ‘relevant person’).
- (2) The process adviser shall consider, having regard in particular to the matters specified in subsection (3), whether it is necessary for the survival of the eligible company, and the whole or any part of its undertaking, as a going concern, that the relevant contract be repudiated.
- (3) The matters referred to in subsection (2) are as follows, namely:
- (a) whether repudiation of the relevant contract would be likely to be more advantageous for the relevant person than a winding up of the eligible company or receivership;
 - (b) whether, if not repudiated, the relevant contract would be burdensome to, and surplus to the requirements of, the eligible company;
 - (c) whether the process adviser would be able to prepare a rescue plan if the contract were not repudiated.
- (4) Where, having complied with subsection (2), the process adviser proposes to repudiate the relevant contract, the process adviser shall—
- (a) subject to the approval of the relevant court, repudiate the relevant contract, or
 - (b) subject to subsection (11), where the process adviser considers that it would be appropriate to do so in all the circumstances, comply with subsections (7) to (10) instead of applying to the relevant court under subsection (5) in pursuance of paragraph (a).
- (5) On the application of the process adviser in pursuance of subsection (4)(a), the relevant court—

- (a) may, if satisfied that the condition in subsection (6) is met—
 - (i) approve the repudiation of the relevant contract with effect from the day on which the rescue plan takes effect under section 558ZB or 558ZE, as the case may be, and
 - (ii) determine the amount of any loss or damage suffered by the relevant person as a result of the repudiation,or
 - (b) shall, if not so satisfied, dismiss the application.
- (6) The condition referred to in subsection (5) is that it is necessary for the survival of the eligible company, and the whole or any part of its undertaking, as a going concern, that the relevant contract be repudiated.
- (7) In any case where subsection (4)(b) applies, the process adviser shall give a notice to the relevant person—
- (a) informing the relevant person that the process adviser proposes to repudiate the relevant contract,
 - (b) setting out the reasons why the process adviser considers that it is necessary for the survival of the eligible company, and the whole or any part of its undertaking, as a going concern that the relevant contract be repudiated,
 - (c) informing the relevant person that, in the event of repudiation of the relevant contract, the relevant person would stand as an unsecured creditor for the amount of loss or damage suffered by the relevant person as a result of the repudiation,
 - (d) specifying the terms on which the process adviser proposes to repudiate the contract (including the amount of any loss or damage suffered by the relevant person as a result of the repudiation, as determined by the process adviser),
 - (e) informing the relevant person that the relevant person has a right to participate in any meeting held under section 558T,
 - (f) informing the relevant person that, in the event that a rescue plan including provision for the repudiation of the relevant contract is approved at such a meeting, the relevant person would have a right under section 558ZC (subject to any application to the relevant court under subsection (5)) to object to—
 - (i) the repudiation, and
 - (ii) the amount determined in respect of any loss or damage,
 - (g) offering the relevant person an opportunity to propose to the process adviser—

- (i) modifications of the terms on which the relevant contract would be repudiated, or
 - (ii) a variation of the terms of the relevant contract in order to avoid the repudiation of the relevant contract,
- (h) in any case where the process adviser considers it appropriate to do so, offering the relevant person a variation of the terms of the relevant contract in order to avoid repudiation of the relevant contract,
- (i) informing the relevant person that—
- (i) the repudiation of the relevant contract, or
 - (ii) any variation of the terms of the relevant contract agreed by the process adviser and the relevant person in pursuance of paragraph (h),
- would take effect on the coming into effect of the rescue plan in accordance with this Part, and
- (j) requesting that the relevant person respond to the notice within a reasonable period (being, except where a shorter period is agreed, at least 10 days after the date on which notice is given) after the giving of the notice.
- (8) Where—
- (a) the relevant person proposes any modifications under subsection (7)(g), the process adviser shall consider the modifications and may—
 - (i) include in the rescue plan provision repudiating the relevant contract on the terms agreed between the process adviser and the relevant person, or
 - (ii) reject the modifications proposed by the relevant person and give the relevant person a notice under subsection (9),
 - (b) the process adviser and the relevant person agree on a variation of the terms of the relevant contract, include in the rescue plan provision affirming the relevant contract subject to that variation, or
 - (c) the relevant person—
 - (i) objects to the proposed repudiation of the contract and does not offer any modifications, or
 - (ii) fails to respond to the notice given under subsection (7) within the period specified in it,

the process adviser shall give the relevant person a notice under subsection (9).

- (9) Where the process adviser considers that the relevant contract should be repudiated, the process adviser shall give a notice to the relevant person—
 - (a) informing the relevant person that the process adviser shall include in the rescue plan provision repudiating the relevant contract,
 - (b) informing the relevant person that the repudiation will take effect on the date (if any) on which the rescue plan takes effect in accordance with the provisions of this Part,
 - (c) specifying the amount determined by the process adviser in respect of loss or damage arising from such repudiation,
 - (d) informing the relevant person that the relevant person has a right to participate in any meeting held under section 558T, and
 - (e) informing the relevant person that, in the event that a rescue plan including provision for the repudiation of the relevant contract is approved at such a meeting, the relevant person has a right under section 558ZC to object to—
 - (i) the repudiation of the relevant contract, and
 - (ii) the amount determined in respect of loss or damage.
- (10) Where the relevant contract is a lease, the process adviser shall assess loss or damage for the purposes of any calculation under subsection (7)(d) or (9)(c) by reference to the following—
 - (a) income shortfall,
 - (b) letting void,
 - (c) letting rent-free,
 - (d) reletting costs,
 - (e) marketing costs, and
 - (f) any other losses or costs that may arise.
- (11) In any case where the process adviser is complying with the requirement imposed by subsection (4)(b), the process adviser may at any time cease complying with that subsection (and subsections (7) to (10)) and comply instead with the requirement imposed by subsection (4)(a).
- (12) Where by virtue of subsection (4) the relevant contract is repudiated, the relevant person shall stand as an unsecured creditor for the amount of loss or damage suffered as a result of the repudiation.

- (13) Any amount payable by the eligible company to the relevant person in respect of any loss or damage suffered by the relevant person as a result of the repudiation of a relevant contract which is—
- (a) determined by the relevant court under subsection (5)(a)(ii), or
 - (b) included in the rescue plan by virtue of this section,
- shall be due by the eligible company to the relevant person as a judgment debt.
- (14) The relevant person has a right to participate in any meeting held under section 558T notwithstanding any approval given by the relevant court under subsection (5)(a).
- (15) Where the process adviser wishes to affirm the relevant contract (other than under subsection (8)(b))—
- (a) he or she shall apply to the relevant court, and
 - (b) the relevant court may approve the affirmation by the process adviser of the relevant contract.
- (16) Where the relevant court approves the repudiation or affirmation of a relevant contract under subsection (5) or (15) or by virtue of section 558ZD(11), it may, in giving such approval, make such orders as it thinks fit for the purposes of giving full effect to its approval, including orders as to notice to, or declaring the rights of, any party affected by such affirmation or repudiation.
- (17) For the avoidance of doubt, a process adviser shall have authority on behalf of the eligible company to repudiate or affirm (with or without variation) a relevant contract in pursuance of the provisions of this section.

CHAPTER 4

*Rescue plan***Process adviser's duty to prepare rescue plan**

- 558Q.** (1) This section applies where a process adviser is appointed in respect of an eligible company by virtue of the passing of a resolution referred to in section 558E(2).
- (2) As soon as practicable after the passing of the resolution, the process adviser shall prepare a rescue plan for the eligible company.
 - (3) In preparing the rescue plan, the process adviser shall take account of—
 - (a) any information provided by creditors by virtue of section 558K(2)
 - (b) or 558O(2)(b), and

- (b) where no such information is provided, any values of claims that the process adviser has estimated under section 558O(5).
- (4) Where—
- (a) the process adviser has given a notice to a creditor under section 558L in respect of an excludable debt, and
 - (b) the creditor concerned has not informed the process adviser of an objection within the time specified in the notice,
- the process adviser shall include the excludable debt in the rescue plan.
- (5) Where the process adviser has given a notice to a person under section 558P(9) in respect of a contract, the process adviser shall include in the rescue plan provision repudiating the contract unless it appears to the process adviser that circumstances have changed since the notice was given and it would no longer be appropriate to do so.
- (6) The rescue plan shall—
- (a) specify each class of members and creditors of the eligible company,
 - (b) specify any class of members and creditors whose interests or claims will not be impaired by the rescue plan,
 - (c) specify any class of members and creditors whose interests or claims will be impaired by the rescue plan,
 - (d) provide equal treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to less favourable treatment,
 - (e) if the process adviser considers it necessary or desirable to do so in order to facilitate the survival of the eligible company, and the whole or any part of its undertaking, as a going concern, specify any changes that should be made in relation to the management or direction of the company,
 - (f) if the process adviser considers it necessary or desirable to do so in order to facilitate such survival, specify any changes that he or she considers should be made in the constitution of the eligible company, whether as regards the management or direction of the company or otherwise,
 - (g) provide for its implementation (including any changes specified under paragraphs (e) and (f)) and the time within which it is to be implemented, and
 - (h) include such other matters as the process adviser deems appropriate.

- (7) A director who fails, without lawful excuse, to implement any provision of the rescue plan which takes effect and which imposes a requirement on the directors of the eligible company within the time for implementing the rescue plan specified under subsection (6)(g) shall be guilty of a category 3 offence.

Further provision with respect to leases

558R. (1) Subject to subsection (3), a rescue plan for an eligible company shall not contain provision that provides for either or both of the following—

- (a) a reduction in the amount of any rent or other periodical payment reserved under a lease of land that falls to be paid after the date from which the rescue plan would come into effect under section 558ZB or 558ZE, as the case may be, or the complete extinguishment of the right of the lessor to any such payments;
- (b) as respects a failure—
- (i) to pay an amount of rent or make any periodical payment reserved under a lease of land, or
- (ii) to comply with any other covenant or obligation of such a lease, that falls to be paid or complied with after the date referred to in paragraph (a), a requirement that the lessor under such a lease shall not exercise, or shall only exercise in specified circumstances, any right, whether under the lease or otherwise, to—
- (I) recover possession of the land concerned;
- (II) effect a forfeiture of the lease or otherwise enter on the land;
- (III) recover the amount of such rent or other payment; or
- (IV) claim damages or other relief in respect of the failure to comply with such a covenant or obligation.

- (2) Subsection (1) shall not apply if the lessor or owner of the property concerned has consented in writing in the prescribed form to the inclusion of the provision referred to in subsection (1) in the rescue plan.

Procedure where process adviser unable to prepare rescue plan

558S. (1) This section applies where the process adviser appointed in respect of an eligible company is unable to prepare a rescue plan for the company.

- (2) As soon as practicable after the process adviser becomes aware of that fact, the process adviser shall—
- (a) prepare a report setting out the matters specified in subsection (3),

- (b) give a copy of the report to the directors of the eligible company, and
- (c) give notice of that fact to—
 - (i) employees of the eligible company,
 - (ii) members of the eligible company,
 - (iii) creditors, and
 - (iv) the Revenue Commissioners.
- (3) The matters referred to in subsection (2)(a) are—
 - (a) the reasons why a rescue plan could not be prepared for the eligible company, and
 - (b) recommendations as to the next steps to be taken by the directors of the eligible company (including the winding up of the company).
- (4) The recommendations of the process adviser referred to in subsection (3)(b) shall not be binding on the eligible company or the directors of the company.
- (5) Notwithstanding subsection (4), where—
 - (a) the process adviser recommends that the eligible company be wound up,
 - (b) the directors of the eligible company decide that the company should continue to trade,
 - (c) the eligible company continues to trade in pursuance of that decision, and
 - (d) within 6 months of that decision the eligible company is wound up, the court may take that decision into account for the purposes of any application under section 610.

CHAPTER 5

*Consideration of rescue plan***Process adviser's duty to call meeting of members and creditors**

- 558T.** (1) This section applies where a process adviser has prepared a rescue plan under section 558Q.
- (2) As soon as practicable after preparing the rescue plan, the process adviser shall call—
 - (a) the appropriate meetings of the creditors or the class concerned of them, and

- (b) the appropriate meetings of the members or the class concerned of them,
for the purpose of considering the rescue plan.
- (3) References in subsection (2) to the appropriate meetings of creditors or members as the case may be, are references to either—
 - (a) separate meetings of the particular creditors or members (as appropriate) who fall into the separate classes that, under the general law, are required to be constituted for the purpose of voting on the rescue plan, or
 - (b) where, under the general law, no such separate classes are required to be constituted for that purpose, a single meeting of the creditors or members (as appropriate).
- (4) A meeting under this section shall be fixed for a date no later than 49 days after the date on which the process adviser is appointed.
- (5) A meeting under this section shall be held at such place as is, in the opinion of the process adviser, the most convenient for the majority of the members or creditors or all, as the case may be.
- (6) Different times or places may be named for the meetings of members and for those of creditors.
- (7) Where an excludable debt is included in the rescue plan, the creditor concerned shall be entitled to vote at any meeting called under this section.

Notice of meeting under section 558T

- 558U.** (1) This section applies where a process adviser calls a meeting under section 558T.
- (2) The process adviser shall, at least 7 days before the day appointed for the meeting, give notice in writing in the prescribed form to every person entitled to attend the meeting of the time and place appointed for the meeting.
 - (3) Notice under this section shall be accompanied by—
 - (a) the rescue plan prepared under section 558Q,
 - (b) a statement of the assets and liabilities (including contingent and prospective liabilities) of the eligible company as at the date on which the rescue plan was prepared under that section,
 - (c) a description of the likely financial outcome of a winding up of the eligible company or of the application of a receivership to that company for each class of members and creditors,
 - (d) a statement by the process adviser explaining—

- (i) the effect of the rescue plan,
 - (ii) the reasons why it is fair and equitable and not unfairly prejudicial,
 - (iii) the likely consequences of a failure to approve the rescue plan (including winding up or receivership), and
 - (iv) where appropriate, the process adviser's views on the likely outcome for creditors if the eligible company were to be wound up,
- (e) information about any changes in the management or direction of the eligible company that are specified in the rescue plan,
 - (f) a statement outlining any material interests of the directors of the eligible company and the effect of the rescue plan to the extent it is different to like interests of other persons,
 - (g) information about the procedure for agreeing to, proposing modifications to or objecting to the rescue plan at the meeting,
 - (h) a general and a special form of proxy (with neither the name nor description of the process adviser or any other person printed or inserted in the body of any such instrument of proxy),
 - (i) a statement setting out—
 - (i) the remuneration payable to, and the costs and expenses incurred by, the Chapter 2 process adviser under this Part, and
 - (ii) the remuneration payable to, and the costs and expenses incurred by, the process adviser appointed in respect of the eligible company by virtue of the passing of a resolution mentioned in section 558E(2) under this Part during the relevant period,
 - (j) an estimate of the additional remuneration that would be payable to, and the costs and expenses that would be incurred by, the process adviser under this Part if the rescue plan were to be approved pursuant to section 558ZB,
 - (k) an estimate of the additional remuneration that would be payable to, and the costs and expenses that would be incurred by, the process adviser under this Part if the rescue plan were not to be approved pursuant to section 558ZB, and
 - (l) such other documents and information as may be prescribed.
- (4) The process adviser shall keep records and supporting evidence of the means by which notice is given to persons under this section.
 - (5) The proceedings at the meeting shall, unless the relevant court otherwise orders, be valid notwithstanding the fact that any member or

creditor fails to receive notice of the meeting for any reason, unless the relevant court considers that the member or creditor has been materially prejudiced by that failure.

(6) In this section—

‘Chapter 2 process adviser’, in relation to an eligible company, means the person who performed the duties imposed on a process adviser by Chapter 2 of this Part in respect of the company;

‘relevant period’, in relation to a process adviser, appointed in respect of an eligible company by virtue of the passing of a resolution mentioned in section 558E(2), means the period—

- (a) beginning with the date of the passing of the resolution, and
- (b) ending on the date on which the rescue plan is prepared under section 558Q.

(7) A person who fails to comply with this section shall be guilty of a category 3 offence.

Proceedings at meeting under section 558T

558V. (1) This section applies in relation to a meeting called by the process adviser under section 558T.

- (2) The process adviser or, if the process adviser is unable to act, someone nominated by him or her shall be chairperson.
- (3) The chairperson may, with the consent of the meeting, adjourn it from time to time and from place to place but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified.
- (4) The chairperson of the meeting shall cause—
 - (a) minutes of the proceedings at the meeting to be drawn up and entered in a book kept for that purpose and signed by him or her, and
 - (b) a list of members or creditors present at the meeting to be made and kept in such form as may be prescribed and such list shall be signed by him or her.
- (5) Other than on the matter of an adjournment, a meeting may not act for any purpose, unless there are present or represented at the meeting—
 - (a) where only one meeting of members and one meeting of creditors requires to be held by virtue of section 558T—
 - (i) at least 2 members, and
 - (ii) at least 3 creditors entitled to vote or all the creditors entitled to vote if the number entitled to vote shall not exceed 3,

or

- (b) where separate meetings require to be held by virtue of that section in respect of members and creditors (or any class of members or creditors)—
 - (i) in the case of a meeting of members, at least 2 members, or
 - (ii) in the case of a creditors' meeting, at least 3 creditors entitled to vote or all the creditors entitled to vote if the number entitled to vote shall not exceed 3.
- (6) If within 30 minutes from the time appointed for the meeting a quorum of members or creditors, as the case may be, is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairperson may appoint.
- (7) However, the day so appointed by the chairperson shall be not less than 4 nor more than 10 days after the day from which the meeting was adjourned.
- (8) A person who fails to comply with subsection (4)(a) or (b) shall be guilty of a category 3 offence.

Proxies

- 558W.** (1) This section applies where the process adviser appointed in respect of an eligible company calls a meeting of the members and creditors of the company under section 558T.
- (2) A member or creditor of the eligible company may vote either in person or by proxy.
 - (3) An instrument of proxy shall be in the prescribed form.
 - (4) A member or a creditor may appoint any person a special proxy to vote at the meeting or any adjournment thereof.
 - (5) Subject to section 558X(2) a member or a creditor may appoint any person a general proxy.
 - (6) A member or a creditor may appoint the process adviser to act as his or her general or special proxy.

Supplemental provisions in relation to section 558W

- 558X.** (1) Every instrument of proxy shall be lodged with the process adviser not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.
- (2) No person who is a minor shall be appointed a general or special proxy.

- (3) In the case of a creditor or member who is incapable of writing because of blindness or other physical infirmity, an instrument of proxy of that creditor or member may, subject to subsection (4), be accepted if that creditor or member has attached his or her signature or mark to the proxy in the presence of a witness and that witness has added to the signature of that creditor or member the witness's description and residence.
- (4) Subsection (3) applies only if—
 - (a) all insertions in the instrument of proxy are in the handwriting of the witness, and
 - (b) the witness has certified, at the foot of the instrument of proxy, that all such insertions have been made by the witness at the request and in the presence of the creditor before the creditor attached his or her signature or mark or, as the case may be, the member before the member attached his or her signature or mark.
- (5) Where a company is a creditor, any person who is duly authorised under the seal of that company to act generally on behalf of that company at meetings of members and creditors may fill in and sign the instrument of proxy on that company's behalf and appoint himself or herself to be that company's proxy.
- (6) The instrument of proxy so filled in and signed by such person shall be received and dealt with as a proxy of that company but this is without prejudice to section 558ZAG.

Consideration by members and creditors of rescue plan

- 558Y.** (1) This section applies to a meeting of members or creditors or any class of members or creditors called to consider a rescue plan for an eligible company in respect of which a process adviser has been appointed.
- (2) Save where expressly provided otherwise in this section, this section shall not authorise, at such meeting, anything to be done in relation to such rescue plan by any member or creditor.
 - (3) At a meeting to which this section applies a modification of the rescue plan may be put to the meeting but may be accepted only with the consent of the process adviser.
 - (4) A rescue plan shall be deemed to have been accepted by a meeting of members or creditors or of a class of members or creditors when 60 per cent in number representing a majority in value of the claims represented at that meeting have voted, either in person or by proxy, in favour of the resolution for the rescue plan.
 - (5) Subject to section 558Z, a rescue plan shall be binding on—

- (a) all the members or class or classes of members, as the case may be, affected by the rescue plan,
- (b) all the creditors or the class or classes of creditors, as the case may be, affected by the rescue plan,
- (c) the eligible company concerned, and
- (d) the directors of the eligible company,

where eligible it is accepted by at least one class of creditors whose interests or claims would be impaired by implementation of the rescue plan and 21 days pass from the date of filing of the notice of approval with the office of the relevant court under section 558Z(6), and no objection is filed in accordance with section 558ZC.

- (6) Nothing in subsection (4) shall, in the case of a member or creditor who abstains from voting, or otherwise fails to cast a vote, in respect of the rescue plan, be read as permitting such an abstention or failure to be regarded as a casting by that person of a vote against the rescue plan.
- (7) Where a State authority is a creditor of the eligible company, such authority shall be entitled to accept a rescue plan under this section notwithstanding—
 - (a) that any claim of such authority as a creditor would be impaired under the rescue plan, or
 - (b) any other enactment.
- (8) In subsection (7) ‘State authority’ means the State, a Minister of the Government, a local authority or the Revenue Commissioners.
- (9) Section 192 shall apply to any resolution to which subsection (4) relates which is passed at any adjourned meeting.

Notification of approval of rescue plan

- 558Z.** (1) This section applies where a rescue plan for an eligible company is approved in accordance with section 558Y.
- (2) The process adviser shall, within 48 hours after the approval of the rescue plan, give notice of the approval in the prescribed form to the persons specified in subsection (3).
 - (3) The persons referred to in subsection (2) are—
 - (a) employees of the eligible company,
 - (b) the Revenue Commissioners,
 - (c) any creditor or member whose claim or interest would be impaired if the rescue plan were implemented, and

- (d) such other persons as may be prescribed.
- (4) Every notice given to persons referred to in subsection (3) shall be accompanied by the following documents—
 - (a) a copy of the rescue plan as approved under section 558Y,
 - (b) a statement by the process adviser explaining—
 - (i) the effect of the rescue plan,
 - (ii) the reasons why it is fair and equitable and not unfairly prejudicial, and
 - (iii) the likely consequences of any failure to implement the rescue plan (including winding up or receivership),
 - (c) a statement outlining any material interests of the directors of the eligible company and the effect of the rescue plan to the extent it is different to like interests of other persons,
 - (d) information in relation to the procedure for filing an objection to the approved rescue plan pursuant to section 558ZC, including:
 - (i) the identification of the relevant court office in which an objection should be filed,
 - (ii) a statement that an objector has 21 days to file an objection from the date notice of approval is filed with the relevant court office and providing the date on which notice of approval was filed,
 - (iii) a statement that if no objection is filed within the 21 day period, the rescue plan will become binding,
 - (iv) a statement that the person may only make submissions on any objection validly filed unless that objection is upheld, and
 - (v) a statement that a person may make submissions more generally only where the relevant court upholds an objection and seeks to modify the rescue plan,
 - (e) a copy of the prescribed form for making an objection, and
 - (f) any such further information as may be prescribed.
- (5) The process adviser shall, within 48 hours after the approval of the rescue plan, deliver notice of the approval of the rescue plan to the Registrar.
- (6) The process adviser shall, within 48 hours after the approval of the rescue plan, file notice of the approval of the rescue plan with the office of the relevant court.

- (7) The process adviser shall keep records and supporting evidence of the means by which notice is given under this section.
- (8) If default is made in complying with this section, the process adviser shall be guilty of a category 3 offence.
- (9) Any *bona fide* error made by the process adviser in complying with the requirements of this section shall not of itself invalidate any approval or any steps taken pursuant to such an approval.

Process adviser's report

- 558ZA.** (1) This section applies where the meeting or meetings required to be held under section 558T (the 'required meetings') has, or have, taken place.
- (2) The process adviser shall, within 49 days of his or her appointment, prepare a report setting out—
 - (a) the rescue plan that was considered at the required meetings,
 - (b) any modification of that plan that was agreed to at the required meetings,
 - (c) the outcome of the required meetings,
 - (d) a statement of the assets and liabilities (including contingent and prospective liabilities) of the eligible company as at the date of the report,
 - (e) a list of the creditors of the eligible company, the amount owing to each such creditor, the nature and value of any security held by any such creditor, and the priority accorded under sections 621 and 622 to any such creditor or any other statutory provision or rule of law,
 - (f) a list of the officers of the eligible company,
 - (g) the process adviser's recommendations,
 - (h) the remuneration payable to, and the costs and expenses incurred by, the process adviser under this Part as at the date of the report, and
 - (i) such other matters as the process adviser deems appropriate.
 - (3) The process adviser shall give a copy of the report to—
 - (a) the eligible company concerned,
 - (b) employees of the eligible company,
 - (c) the Director,
 - (d) the office of the relevant court, and
 - (e) any interested party who, by written application to the process adviser, requests a copy of the report.

- (4) The process adviser shall comply with the requirements imposed by subsection (3)(a) and (b) within 49 days of his or her appointment.
- (5) If the relevant court, on an application to it in that behalf, so directs, there may be omitted from any copy of the report given under subsection (3)(e) to an interested party such parts of it as are specified in the direction of the relevant court.
- (6) The relevant court may, in particular, on such an application, direct that there may be omitted from a copy of the report given under subsection (3)(e) any information the inclusion of which in such a copy would be likely to prejudice the survival of the eligible company, or the whole or any part of its undertaking, as a going concern.

CHAPTER 6

*Objections to rescue plan***Confirmation of rescue plan**

- 558ZB.** (1) Subject to subsection (2), a rescue plan shall, notwithstanding any other enactment, become binding within the 21 days from the date of filing of the notice of approval with the office of the relevant court under section 558Z(6), provided no objection is filed by a creditor or a member within the 21 days from the date of filing of the notice of approval.
- (2) Notwithstanding subsection (1), where a rescue plan is not compliant with this Act, the rescue plan shall not become binding.
 - (3) Where an objection is filed within the 21 days referred to in subsection (1), the provisions of sections 558ZD and 558ZZ apply.

Objection to rescue plan

- 558ZC.** (1) A creditor or member may, subject to this section, file an objection to a rescue plan.
- (2) Notice of an objection shall be sent in the prescribed form to—
 - (a) the process adviser, and
 - (b) the office of the relevant court.
 - (3) An objection may be made to a rescue plan on any of the following grounds—
 - (a) that the rescue plan unfairly prejudices the interests of the objector,
 - (b) that the rescue plan is unfair and inequitable in relation to the objector,
 - (c) that there was some material irregularity at or in relation to a meeting to which section 558Y applies,

- (d) that a member or creditor has been materially prejudiced by not receiving notice of the meeting or any other notice required to be sent under the Act,
 - (e) that acceptance of the rescue plan by the meeting was obtained by improper means,
 - (f) that the rescue plan was put forward for an improper purpose,
 - (g) that it is not necessary for the survival of the eligible company, and the whole or any part of its undertaking, as a going concern that the contract specified in the objection be repudiated or affirmed,
 - (h) that the amount of loss or damage determined in respect of the repudiation of the contract specified in the objection is inadequate or excessive,
 - (i) that the provisions with respect to leases in section 558R apply,
 - (j) that the sole or primary purpose of the rescue plan is the avoidance of payment of tax due,
 - (k) that the rescue plan contains an unlawful provision, or
 - (l) such other grounds as may be prescribed.
- (4) Any person who voted to accept the rescue plan referred to in section 558Y may not file an objection under this section except on the grounds—
- (a) that such acceptance was obtained by improper means, or
 - (b) that after voting to accept the rescue plan the person became aware that the rescue plan was put forward for an improper purpose.
- (5) Where the relevant court has approved under section 558P the affirmation or repudiation of a contract, an objection may not be made on the ground specified in subsection (3)(g) or (h).
- (6) Objections filed in accordance with this section shall be considered by the relevant court in accordance with section 558ZD.

Court hearing in case of objection

- 558ZD.** (1) An objection by a creditor or member under section 558ZC shall be set down for hearing by the relevant court as soon as may be after receipt of the objection by the relevant court.
- (2) The following persons may appear and be heard at a hearing under subsection (1):
- (a) the eligible company;
 - (b) the process adviser;

- (c) any creditor or member whose claim or interest would be impaired if the rescue plan were implemented;
 - (d) the directors of the eligible company;
 - (e) any other person the relevant court considers appropriate.
- (3) Any person entitled to appear and be heard at a hearing under subsection (1) shall be limited in the person's submissions to the issues raised in any notice of objection under section 558ZC unless—
- (a) an objection is upheld,
 - (b) the relevant court proposes to modify the rescue plan, and
 - (c) the High Court considers winding up the company.
- (4) Where an objection is made under section 558ZC, the onus of proof shall be on the process adviser to establish that the objection should not be upheld.
- (5) At a hearing under subsection (1) the relevant court may, as it thinks proper, subject to the provisions of this section and section 558ZE—
- (a) dismiss the objection, or
 - (b) uphold the objection.
- (6) Subject to subsection (8), an objection shall not be dismissed if the rescue plan contains a provision relating to a lease of, or any hiring agreement in relation to, property other than land and, in the opinion of the relevant court—
- (a) subject to section 558R(1) the value of that property is substantial, and
 - (b) that provision is of like effect to a provision referred to in section 558R(1)(a) or (b).
- (7) In deciding, for the purpose of subsection (6), whether the value of the property concerned is substantial, the matters to which the relevant court shall have regard shall include the length of the unexpired term of the lease or hiring agreement concerned.
- (8) If the lessor or owner of the property concerned has consented in writing in the prescribed form to the inclusion of the provision referred to in subsection (6) in the rescue plan—
- (a) subsection (6) shall not apply, and
 - (b) subsection (9)(a) shall not be subject to section 558R(1).
- (9) Where the relevant court upholds an objection under this section, the relevant court may make such order as it deems fit, including, but not limited to the following, namely:

- (a) an order modifying the rescue plan;
 - (b) an order approving the modifications of the rescue plan;
 - (c) an order that the decision of any meeting be set aside;
 - (d) an order that any meeting be reconvened.
- (10) The relevant court shall not approve a modified rescue plan unless the relevant court is satisfied that—
- (a) the modified rescue plan is fair and equitable in relation to any member or creditor whose interests or claims would be impaired by implementation,
 - (b) the modified rescue plan is not unfairly prejudicial to the interests of any interested party, and
 - (c) the modified rescue plan is compliant with this Act,
- and in any case shall not approve any modified rescue plan if the sole or primary purpose of it is the avoidance of payment of tax due.
- (11) Where the relevant court dismisses an objection under section 558ZC(3)(g), the relevant court shall be deemed to have approved the repudiation of the contract concerned.
- (12) Where the relevant court dismisses an objection or approves a modified rescue plan, the rescue plan shall, subject to section 558ZZ(9) be binding on all the members or class or classes of members, as the case may be, affected by the rescue plan and also on the eligible company.
- (13) Where the relevant court dismisses an objection or approves a modified rescue plan, the rescue plan shall, notwithstanding any other enactment but subject to section 558ZZ(10), be binding on all the creditors or the class or classes of creditors, as the case may be, affected by the rescue plan in respect of any claim or claims against the eligible company and any person other than the company who, under any enactment, rule of law or otherwise, is liable for all or any part of the debts of the company.

Supplemental provisions in relation to section 558ZD and section 558ZZ

- 558ZE.** (1) Where the relevant court dismisses an objection or approves modified terms of a rescue plan under section 558ZD or 558ZZ, it may make such orders for the implementation of its decision as it deems fit.
- (2) Where any objection under section 558ZD or 558ZZ is dismissed, the rescue plan shall come into effect immediately (unless the relevant court deems it appropriate to fix a later date).
 - (3) Where the relevant court approves a modified rescue plan under section 558ZD such a plan shall, subject to any further modifications

made under section 558ZZ(6)(b), come into effect from a date fixed by the relevant court, which date (unless the relevant court deems it appropriate to fix a later one) shall be a date falling no later than 21 days after the date of the approval of the rescue plan.

- (4) Where the relevant court dismisses an objection or approves a modified rescue plan, a certified copy of any order made by the relevant court under section 558ZD or 558ZZ shall be delivered by the process adviser, or by such person as the relevant court may direct, to the Registrar.
- (5) Where the High Court upholds an objection under section 558ZD, the High Court may, if it considers it just and equitable to do so, make an order for the winding up of the eligible company, or any other order as it deems fit.
- (6) Nothing in Chapter 6 confers on the Circuit Court any jurisdiction to hear a petition for the winding up of, or to wind up, a company.
- (7) Notwithstanding—
 - (a) subsection (4), or any other provision of Chapter 3, nothing in this Part shall prevent the process adviser from including in a modified rescue plan any provisions that will not involve the impairment of the interests of members or creditors of the eligible company, or
 - (b) any foregoing provision of Chapter 3, nothing in Chapter 3 shall prevent the process adviser from including in a rescue plan any provision that provides for a reduction of the eligible company's company capital nor, subject to subsection (8), the relevant court from approving any such provision in the context of a modified rescue plan.
- (8) If the extent of the reduction of the eligible company's company capital provided for in any modified rescue plan as referred to in subsection (7)(b) would, in the opinion of the relevant court, and having regard to—
 - (a) the scale and nature of the business that the eligible company carries on, and
 - (b) the likely liabilities it will incur on an on-going basis,result in the eligible company's having an amount of the eligible company capital that is manifestly inadequate, the relevant court shall not approve the modified rescue plan or, where appropriate, shall approve the modified rescue plan subject to a modification that a lower level of reduction, as determined by the relevant court, of the eligible company's company capital shall have effect under the rescue plan.

CHAPTER 7

*Liability of third parties for debts of company***Definitions (Chapter 7) and savings****558ZF.** (1) In this Chapter—

‘creditor’ shall be read in accordance with section 558ZG;

‘debt’ shall be read in accordance with section 558ZG;

‘liability’ shall be read in accordance with section 558ZG;

‘third person’ shall be read in accordance with section 558ZG.

(2) Nothing in this Chapter shall affect the operation of—

(a) section 558N(4)(f), or

(b) any rule of law whereby any act done by the creditor results in the third person being discharged or released from his or her obligation in respect of the liability.

Circumstances in relation to which subsequent provisions of Chapter have effect**558ZG.** Subject to section 558ZH(2), the subsequent sections of this Chapter have effect in relation to the following liability (the ‘liability’), namely the liability—

(a) of any person (the ‘third person’) whether under a guarantee or otherwise;

(b) in respect of a debt (the ‘debt’) of an eligible company to which a process adviser has been appointed that is owed to another (the ‘creditor’).

General rule: liability of third person not affected by rescue plan**558ZH.** (1) Notwithstanding the confirmation of a rescue plan, the liability of a third person shall not be affected by the fact that the debt is the subject of a rescue plan that has taken effect under section 558ZB or 558ZE, but this is subject to subsections (2) and (3).

(2) The third person and the creditor may provide in an agreement between them that the liability of a third person shall be so affected.

(3) Neither subsection (1) nor any of the subsequent provisions of this Chapter shall apply if the third person is an eligible company in respect of which a process adviser has been appointed.

Enforcement by creditor of liability: restrictions in that regard unless certain procedure employed to benefit of third person**558ZI.** (1) If the creditor proposes to enforce, by legal proceedings or otherwise, the obligation of the third person in respect of the liability, then he or

she shall, not more than 48 hours after he or she has received notice of a meeting under section 558Y, give a notice to the third person containing the following offer.

- (2) That offer is an offer in writing by the creditor to transfer to the third person (which the creditor is, by virtue of this section, empowered to do) any rights, so far as they relate to the debt, he or she may have under section 558Y to vote in respect of a rescue plan for the eligible company.
- (3) If that offer is accepted by the third person, that offer shall, if the third person furnishes to the process adviser at the meeting concerned, a copy of the offer and informs the process adviser of his or her having accepted it, operate, without the necessity for any assignment or the execution of any other instrument, to entitle the third person to exercise the rights referred to in subsection (2).
- (4) However, neither that transfer nor any vote cast by the third person on foot of the transfer shall operate to prejudice the right of the creditor to object to the rescue plan under section 558ZC.
- (5) If the creditor fails to make the offer referred to in subsection (1) in accordance with that subsection, then, subject to subsection (6), the creditor may not enforce by legal proceedings or otherwise the obligation of the third person in respect of the liability.
- (6) Subsection (5) shall not apply if—
 - (a) a rescue plan for the eligible company does not take effect under section 558ZB or 558ZE, and
 - (b) in either of those cases, the creditor has obtained the leave of the relevant court to enforce the obligation of the third person in respect of the liability.

Payment by third person to creditor post rescue period - statutory subrogation in favour of third person in certain circumstances

- 558ZJ.** (1) This section applies where the third person makes a payment to the creditor in respect of the liability after the rescue period in relation to the eligible company concerned has expired.
- (2) Where this section applies any amount that would, but for the foregoing payment, be payable to the creditor in respect of the debt under a rescue plan that has taken effect under section 558ZB or 558ZE in relation to the company shall become and be payable to the third person upon and subject to the same terms and conditions as the rescue plan provided that it was to be payable to the creditor.

CHAPTER 8

*Conclusion of rescue process***Conclusion of rescue period and termination of appointment of process adviser**

558ZK. The appointment of a process adviser in respect of an eligible company shall be terminated—

- (a) where a rescue plan for the eligible company takes effect under section 558ZB or 558ZE, on the date on which it takes effect under the section concerned,
- (b) where no rescue plan for the eligible company is approved at a meeting held under section 558T, on the date on which the process adviser gives a copy of his or her report to the eligible company under section 558ZA(3),
- (c) where—
 - (i) the relevant court upholds an objection to a rescue plan for the eligible company, and
 - (ii) no rescue plan takes effect for the eligible company, on the date on which the relevant court upholds the objection or such later date as may be fixed by the relevant court, or
- (d) on such other date as may be prescribed.

Power of relevant court to revoke rescue plan where fraud

558ZL. (1) An eligible company or any interested party may, within 180 days after the date on which the rescue plan for the company takes effect under section 558ZB or 558ZE, apply to the court for revocation of the rescue plan on the grounds that it was procured by fraud.

- (2) On such application, the court may, if satisfied that that rescue plan was procured by fraud, revoke the rescue plan on such terms and conditions, particularly with regard to the protection of the rights of parties acquiring interests or property in good faith and for value in reliance on that rescue plan, as it deems fit.
- (3) As soon as practicable after the revocation under this section of such a rescue plan, a certified copy of the order made by the court shall be delivered to—
 - (a) the Registrar, and
 - (b) the Director,by such person as the court may direct.

Power of relevant court to order the return of assets improperly transferred

558ZM. (1) Where, on the application of the process adviser for an eligible company at any time during the rescue period, it can be shown to the satisfaction of the relevant court that—

- (a) any property of the eligible 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 eligible company, its creditors or members,

the relevant court may, if it deems it just and equitable to do so, make the following order.

- (2) That order of the relevant court is one requiring any person who appears to have the use, control or possession of such property or the proceeds of the sale or development of it to deliver it or pay a sum in respect of it to the process adviser on such terms or conditions as the relevant court sees fit.
- (3) Subsection (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 an eligible company to which section 604 applies.
- (4) In deciding whether it is just and equitable to make an order under this section, the relevant court shall have regard to the rights of persons who have a *bona fide* and for value acquired an interest in the property subject of the application.

Director's power to examine books and records

558ZN. (1) In this section—

‘appropriate person’ in relation to the eligible company referred to in subsection (2), means any of the following—

- (a) the eligible company,
- (b) irrespective of the time at which he or she holds or held such status—
 - (i) a process adviser of the eligible company,
 - (ii) an officer of the eligible company, or
 - (iii) a receiver appointed to any property of the eligible company;

‘books and records’ means the books and records of the eligible company and, in addition, in the case of a request made of a process adviser, the books and records of the process adviser.

- (2) At any time during the rescue period relating to an eligible company or after its conclusion, the Director may, where he or she considers it necessary or appropriate, request (specifying the reason why the request is being made) an appropriate person to produce to the Director the books and records for examination, and the appropriate person shall comply with the request.
- (3) In the case of a request of a process adviser under subsection (2), the request may relate to a particular eligible company in respect of which the process adviser is acting, or has acted, as process adviser under this Part or to all eligible companies in respect of which the process adviser is so acting or has so acted.
- (4) An appropriate person shall—
 - (a) answer any questions of the Director concerning the content of the books and records requested to be produced under subsection (2),
 - (b) if he or she is a process adviser, answer any questions of the Director concerning a particular eligible company in respect of which the process adviser is acting, or has acted, as process adviser under this Part or, as the case may be, all eligible companies in respect of which the process adviser is so acting or has so acted,
 - (c) give to the Director such assistance in the matter as the appropriate person is reasonably able to give.
- (5) An appropriate person shall give to the Director such access and facilities as are necessary for inspecting and taking copies of books and records requested to be produced by him or her under subsection (2).
- (6) A request under subsection (2) may not be made in respect of books and records relating to a rescue period that has ended more than 6 years prior to the date of the request.
- (7) An appropriate person who—
 - (a) fails to comply with a request under subsection (2),
 - (b) fails to answer any question under subsection (4)(a) or (b),
 - (c) fails to give the Director the assistance referred to in subsection (4) (c), or
 - (d) without lawful excuse, fails to give the Director the access or facilities referred to in subsection (5),shall be guilty of a category 2 offence.
- (8) Nothing in this section shall be taken as excluding or restricting any statutory rights of the Government, a Minister of the Government or a

person acting under the authority of the Government or a Minister of the Government, or the powers of any person under Part 13.

Reporting to Director of Corporate Enforcement of misconduct by process advisers

558ZO. (1) Where a disciplinary committee or tribunal (however called) of a prescribed professional body—

- (a) finds that a member of that body who is or has acted as a process adviser in respect of an eligible company under this Part has not maintained appropriate records as required by this Part,
- (b) has reasonable grounds for believing that such a member has committed a category 1 or 2 offence while so acting,

the professional body shall report the matter, giving details of the finding or, as the case may be, of the alleged offence, to the Director forthwith.

- (2) If a professional body fails to comply with this section, it, and any officer of the body to whom the failure is attributable, shall be guilty of a category 3 offence.

CHAPTER 9

Enforcement

Offence of acting as process adviser when unqualified

558ZP. (1) A person may not act as a process adviser under this Part in respect of an eligible company unless the person is qualified under section 633 for appointment as a liquidator of the eligible company.

- (2) A person who contravenes subsection (1) shall be guilty of a category 2 offence.

Offence where director fails to disclose information or misleads process adviser

558ZQ. (1) A director of an eligible company who intentionally—

- (a) fails to disclose to the process adviser appointed in respect of the eligible company any relevant information—
 - (i) that is available to him or her, and
 - (ii) that he or she has been required to produce by the process adviser,
- (b) provides any false or misleading information to the process adviser in respect of the eligible company, or

- (c) fails to disclose to the process adviser in respect of the eligible company any information available to him or her that the director knows, or ought to know, is relevant information,

shall be guilty of a category 2 offence.

- (2) In subsection (1), ‘relevant information’ means information which is material to the exercise by the process adviser of his or her functions under this Part.

Prosecution of officers and members of company

558ZR. (1) This section applies where a process adviser has been appointed in relation to an eligible company.

- (2) If it appears to the process adviser, at any time during the rescue period, that any past or present officer, or any member, of the eligible company has been guilty of any offence in relation to the company, the process adviser shall forthwith report the matter to the Director of Public Prosecutions.

- (3) Where the process adviser reports a matter under subsection (2) to the Director of Public Prosecutions, the process adviser shall—

- (a) provide to the Director of Public Prosecutions such information, relating to the matter in question, as he or she may require, and
- (b) give to him or her such access to, and facilities for, inspecting and taking copies of such documents, being documents in the possession or under the control of the process adviser and relating to the matter in question, as he or she may require.

- (4) Where a foregoing report is made by the process adviser, the process adviser shall also report the matter to the Director of Corporate Enforcement.

- (5) Where a matter is reported by the process adviser under subsection (4) to the Director of Corporate Enforcement, the process adviser shall—

- (a) provide to the Director of Corporate Enforcement such information, relating to the matter in question, as he or she may require, and
- (b) give to him or her such access to, and facilities for, inspecting and taking copies of such documents, being documents in the possession or under the control of the process adviser and relating to the matter in question, as he or she may require.

- (6) If, where any matter is reported under subsection (2) or (4) to—

- (a) the Director of Public Prosecutions, or
- (b) the Director of Corporate Enforcement,

and the Director of Public Prosecutions or, as the case may be, 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 each of the persons mentioned in subsection (7) to give all assistance in connection with the prosecution which he or she is reasonably able to give.

- (7) The persons referred to in subsection (6) are the process adviser and—
- (a) every officer (past or present) of the eligible company, and
 - (b) every agent (past or present) of the eligible company, other than the defendant in the proceedings.
- (8) For the purposes of subsection (7), ‘agent’, in relation to the eligible company, includes—
- (a) the bankers and solicitors of the eligible company, and
 - (b) any persons employed by the eligible company as auditors, accountants, book-keepers or taxation advisers, or other persons employed by it in a professional, consultancy or similar capacity, whether those persons are (or were) or are not (or were not) officers of the eligible company.
- (9) If any person fails or neglects to give assistance in the manner required by subsection (6), the court may, on the application of the Director of Public Prosecutions or, as the case may be, the Director of Corporate Enforcement, direct that person to comply with the requirements of that subsection.
- (10) Where any such application is made in relation to a process adviser, the court may, unless it appears that the failure or neglect to comply was due to the process adviser not having in his or her hands sufficient assets of the eligible company to enable him or her so to do, direct that the costs of the application shall be borne by the process adviser personally.

CHAPTER 10

Powers of process adviser

Powers of process adviser

- 558ZS.** (1) Any provision of this Act relating to the rights and powers of a statutory auditor of an eligible company and the supplying of information to and co-operation with such auditor shall, with the necessary modifications, apply to a process adviser appointed in respect of the company.
- (2) Notwithstanding any provision of this Act relating to notice of general meetings, a process adviser shall have power to convene, set the

agenda for, and preside at meetings of the board of directors and general meetings of the eligible company in respect of which he or she is appointed and to propose motions or resolutions and to give reports to such meetings.

- (3) A process adviser shall be entitled to reasonable notice of, to attend and be heard at, all meetings of the board of directors of the eligible company and all general meetings of the company in respect of which he or she is appointed.
- (4) For the purpose of subsection (3) ‘reasonable notice’ shall be deemed to include a description of the business to be transacted at any such meeting.
- (5) A process adviser has the power referred to in subsection (6) where he or she becomes aware of any actual or proposed act, omission, course of conduct, decision or contract by or on behalf of—
 - (a) the eligible company in respect of which he or she has been appointed,
 - (b) the eligible company’s officers, employees, members or creditors, or
 - (c) any other person,in relation to the income, assets or liabilities of the eligible company which, in the process adviser’s opinion, is or is likely to be to the detriment of the company, or any interested party.
- (6) That power of the process adviser is to take whatever steps are necessary, subject to the right of parties acquiring an interest in good faith and for value in such income, assets or liabilities, to halt, prevent or rectify the effects of such act, omission, course of conduct, decision or contract.

Production of documents and evidence

- 558ZT.** (1) It shall be the duty of the officers and agents of an eligible company in respect of which a process adviser has been appointed or of a related company to—
- (a) produce to the process adviser all books and documents of, or relating to, any such company which are in their custody or power,
 - (b) attend before the process adviser when required by the process adviser so to do, and
 - (c) otherwise give to the process adviser all assistance in connection with the process adviser’s functions which they are reasonably able to give.

- (2) If the process adviser considers that a person, other than an officer or agent of any foregoing company, is or may be in possession of any information concerning the company's affairs, the process adviser may require that person to—
- (a) produce to the process adviser any books or documents in his or her custody or power relating to the company,
 - (b) attend before the process adviser, and
 - (c) otherwise give to the process adviser all assistance in connection with the process adviser's functions which that person is reasonably able to give,
- and it shall be the duty of that person to comply with the requirement.
- (3) If the process adviser has reasonable grounds for believing that a director of any foregoing company maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the State or elsewhere, into or out of which there has been paid—
- (a) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement particulars of which have not been disclosed in the financial statements of any company for any financial year as required by this Act, or
 - (b) any money which has been in any way connected with any act or omission, or series of acts or omissions, which, on the part of that director, constituted misconduct (whether fraudulent or not) towards that company or its members,
- the process adviser may require the director to produce to the process adviser all documents in the director's possession, or under his or her control, relating to that bank account and it shall be the duty of the director to comply with the requirement.
- (4) In subsection (3)—
- 'bank account' includes an account with any person exempt by virtue of section 7(4) of the Central Bank Act 1971 from the requirement of holding a licence under section 9 of that Act;
- 'director' means—
- (a) any present or past director (including any present or past shadow director), and
 - (b) any person connected, within the meaning of section 220, with such a director.
- (5) A process adviser may examine on oath, either by word of mouth or on written interrogatories, the officers and agents of an eligible company

or other person as is mentioned in subsection (1) or (2) in relation to that company's affairs and may—

- (a) administer an oath accordingly, or
 - (b) reduce the answers of such person to writing and require him or her to sign them.
- (6) If any officer or agent of a foregoing company or other such person—
- (a) refuses to produce to the process adviser any book or document which it is his or her duty under this section to produce,
 - (b) refuses to attend before the process adviser when requested by the process adviser to do so, or
 - (c) refuses to answer any question which is put to him or her by the process adviser with respect to the affairs of the company,
- the process adviser may provide a certificate under his or her hand to the relevant court stating that such a refusal has occurred.
- (7) On such a certificate being provided to it, the relevant court may enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the officer, agent or other person to whom the certificate relates or any statement which may be offered in defence, make any order or direction it thinks fit.
- (8) Without prejudice to the generality of subsection (7), the relevant court may, after a hearing under that subsection, make a direction—
- (a) to the person concerned to attend or re-attend before the process adviser or produce particular books or documents or answer particular questions put to him or her by the process adviser, or
 - (b) that the person concerned need not produce a particular book or document or answer a particular question put to him or her by the process adviser.
- (9) Section 795 shall apply for the purposes of this section as it applies for the purposes of Part 13 and, accordingly, for the purpose of this section, references in section 795 to Part 13, or relevant provisions of that Part, shall be read as references to this section.
- (10) In this section—
- (a) any reference to officers or to agents includes a reference to past, as well as present, officers or agents, as the case may be;
 - (b) 'agents', in relation to a company, includes—
 - (i) the bankers and solicitors of the company, and
 - (ii) any persons employed by the company as auditors, accountants, book-keepers or taxation advisers, or other persons employed by

it in a professional, consultancy or similar capacity, whether those persons are (or were) or are not (or were not) officers of the company.

No lien over eligible company's books, records, etc.

558ZU. (1) Without prejudice to subsections (2) and (3), where a process adviser is appointed in respect of an eligible company by virtue of section 558E(2), no person shall be entitled as against the process adviser to—

(a) withhold possession of—

(i) any deed, instrument or other document belonging to the eligible company, or

(ii) any accounting records, receipts, bills, invoices, or other papers of a like nature relating to the accounts or trade, dealings or business of the eligible company,

or

(b) claim any lien on any document or paper referred to in paragraph (a).

(2) Where a mortgage, charge or pledge has been created by the deposit of any such document or paper with a person, the production of the document or paper to the process adviser by the person shall not operate to prejudice the person's rights under the mortgage, charge or pledge (other than any right to possession of the document or paper).

(3) Where by virtue of this section a process adviser has possession of—

(a) any document or papers of a receiver, or

(b) any documents or papers that a receiver is entitled to examine,

the process adviser shall, unless the relevant court otherwise orders, make the document or papers available for inspection by the receiver at all reasonable times.

Power to deal with charged property etc.

558ZV. (1) Where, on an application by the process adviser appointed in respect of an eligible company, the relevant court is satisfied that—

(a) the disposal (with or without other assets) of any property of the eligible company which is subject to a security which, as created, was a floating charge, or

(b) the exercise by the process adviser of his or her powers in relation to such property,

would be likely to facilitate the survival of the whole or any part of the eligible company as a going concern, the relevant court may by order authorise the process adviser to dispose of the property, or exercise his

or her powers in relation to it, as the case may be, as if it were not subject to the security.

(2) Where, on an application by the process adviser appointed in respect of an eligible company, the relevant court is satisfied that the disposal (with or without other assets) of—

(a) any property of the eligible company subject to a security other than a security to which subsection (1) applies, or

(b) any goods in the possession of the eligible company under a hire-purchase agreement,

would be likely to facilitate the survival of the whole or any part of the eligible company as a going concern, the relevant court may by order authorise the process adviser to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(3) Where property is disposed of under subsection (1), the holder of the security shall have the same priority in respect of any property of the eligible company directly or indirectly representing the property disposed of as he or she would have had in respect of the property subject to the security.

(4) An order under subsection (2) shall include a condition that—

(a) the net proceeds of the disposal of the property or goods concerned, and

(b) where those proceeds are less than such amount as may be determined by the relevant court to be the net amount which would be realised on a sale of the property or goods concerned in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(5) Where a condition imposed in pursuance of subsection (4) relates to 2 or more securities, that condition operates to require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(6) A certified copy of an order under subsection (1) or (2) in relation to a security shall, within 7 days after the date of the making of the order, be delivered by the process adviser to the Registrar.

(7) If the process adviser, without reasonable excuse, fails to comply with subsection (6), he or she shall be guilty of a category 4 offence.

- (8) References in this section to a hire-purchase agreement include references to—
- (a) a conditional sale agreement;
 - (b) a retention of title agreement; and
 - (c) an agreement for the bailment of goods which is capable of subsisting for more than 3 months.

Resignation of process adviser

- 558ZW.** (1) The process adviser appointed in respect of an eligible company may, by a notice in writing that complies with subsection (3) given to the company and stating his or her intention to do so, resign as process adviser.
- (2) The resignation shall take effect on the date on which the notice is so given or on such later date as may be specified in the notice.
- (3) A notice under subsection (1) shall contain either—
- (a) a statement to the effect that there are no circumstances connected with the resignation to which it relates that the process adviser concerned considers should be brought to the notice of the members or creditors of the eligible company, or
 - (b) a statement of any such circumstances as are mentioned in paragraph (a).
- (4) Where a notice under subsection (1) is given to an eligible company—
- (a) the process adviser concerned shall, within 7 days after the date of such service, send a copy of the notice to the Registrar and the office of the relevant court, and
 - (b) subject to subsection (5), the eligible company shall, if the notice contains a statement referred to in subsection (3)(b), not later than 14 days after the date of such service, send a copy of the notice to every creditor and member in accordance with subsection (5).
- (5) Copies of a notice given to an eligible company under subsection (1) need not be given to the members and creditors of the company if, on the application of the company concerned or any other person who claims to be aggrieved, the relevant court is satisfied that the notice contains material which has been included to secure needless publicity for a defamatory matter and orders that that thing need not be done.
- (6) The relevant court may order the eligible company's costs on an application such as is referred to in subsection (5) to be paid in whole or in part by the process adviser concerned notwithstanding that he or she is not a party to the application.

- (7) A person who fails to comply with this section shall be guilty of a category 3 offence.

General provisions as to process advisers – resignation, filling of vacancy, etc.

558ZX. (1) Where the person appointed as the process adviser of an eligible company—

- (a) dies,
- (b) becomes incapable (whether through ill-health or otherwise) of performing the functions of a process adviser in relation to the eligible company,
- (c) resigns as process adviser, or
- (d) is no longer qualified to perform the functions conferred on a process adviser by this Act,

the directors of the eligible company shall, as soon as practicable after becoming aware of the fact, consider whether to pass a resolution appointing another person as process adviser.

- (2) Where the directors of the eligible company pass a resolution appointing a new process adviser, they shall, within 48 hours of the appointment—

- (a) deliver notice of the appointment to—
 - (i) the Registrar, and
 - (ii) the office of the relevant court,

and

- (b) give notice of the appointment to the persons mentioned in subsection (3).

- (3) The persons are—

- (a) employees of the eligible company,
- (b) members of the eligible company,
- (c) creditors of the eligible company,
- (d) the Revenue Commissioners, and
- (e) such other persons as may be prescribed.

- (4) A process adviser shall be described by the style of ‘the process adviser’ of the particular eligible company in respect of which he or she is appointed and not by his or her name.

- (5) In carrying out the functions conferred on a process adviser under this Part, a process adviser shall be deemed to be an officer of the court.

- (6) The acts of a process adviser shall be valid notwithstanding any defects that may afterwards be discovered in his or her appointment or qualification.
- (7) A process adviser shall be personally liable on any contract entered into by him or her in the performance of his or her functions (whether such contract is entered into by the process adviser in the name of the eligible company concerned or in his or her own name as process adviser or otherwise) unless the contract provides that he or she is not to be personally liable on such contract.
- (8) The process adviser shall, in respect of that personal liability, be entitled to indemnity out of the assets of the eligible company concerned.
- (9) Nothing in subsection (7) or (8) shall be taken as limiting any right to indemnity which the process adviser would have apart from either subsection, or as limiting the process adviser's liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

CHAPTER 11

*Process adviser: remuneration, costs and expenses***Process adviser: remuneration, costs and expenses**

- 558ZY.** (1) The relevant court may from time to time make such orders as it thinks proper for payment of the remuneration and costs of, and reasonable expenses properly incurred by, a process adviser.
- (2) Unless the relevant court otherwise orders, the remuneration, costs and expenses of a process adviser shall be paid and the process adviser shall be entitled to be indemnified in respect thereof out of the revenue of the business of the eligible company to which he or she has been appointed, or the proceeds of realisation of the assets (including investments).
 - (3) Subject to subsection (4), the functions of a process adviser may be performed by him or her with the assistance of persons appointed or employed by him or her for that purpose.
 - (4) A process adviser shall, in so far as is reasonably possible, make use of the services of the staff and facilities of the eligible company to which the process adviser has been appointed to assist the process adviser in the performance of his or her functions.
 - (5) In considering any matter relating to the costs, expenses and remuneration of a process adviser the relevant court shall have particular regard to subsection (4).

Application to relevant court for review of remuneration etc. of process adviser

- 558ZZ.** (1) This section applies where notice of approval of a rescue plan for an eligible company is filed with the office of the relevant court under section 558Z(6).
- (2) Any creditor or member of the eligible company may apply to the relevant court, within 21 days after the date on which the notice of approval is filed, to review the remuneration, costs and expenses, claimed by a process adviser under this Part.
- (3) Notice of objection shall be sent in the prescribed form to—
- (a) the process adviser, and
 - (b) the office of the relevant court.
- (4) Where no application is filed under subsection (2) within 21 days of the notice of approval under section 558ZB(1), the remuneration, costs and expenses of the process adviser shall be deemed to be fixed in the amount set out in the process adviser's report.
- (5) An application under subsection (2) shall be heard after the hearing of any objection under section 558ZD.
- (6) On the making of an application under subsection (2), the relevant court may, as it thinks fit—
- (a) confirm the amount stated in the process adviser's report under section 558ZA, or
 - (b) subject to any order made by virtue of section 558ZY(1), alter that amount and make any consequential modifications to the rescue plan.
- (7) If, on an application under subsection (2)—
- (a) the relevant court does not reduce the process adviser's remuneration, costs and expenses, the applicant shall bear the costs, fees and expenses of the application, or
 - (b) the relevant court does reduce the process adviser's remuneration, costs and expenses, the court may make such order as it deems fit as to the costs, fees and expenses of the application.
- (8) In deciding on the merits of an application under subsection (2), the relevant court shall have regard to all the circumstances, including in particular—
- (a) whether the process adviser had proper regard to section 558ZY(4),
 - (b) the time properly required to be given by the process adviser and by his or her assistants during the rescue period,

- (c) the complexity (or otherwise) of the case,
 - (d) the effectiveness with which the process adviser appears to have carried out his or her duties, and
 - (e) the value and nature of the property with which the process adviser has to deal.
- (9) Where the relevant court dismisses an application under subsection (2) or approves a modified rescue plan following an alteration under subsection (6)(b), the rescue plan shall be binding on all the members or class or classes of members, as the case may be, affected by the rescue plan and also on the eligible company.
- (10) Where the relevant court dismisses an application under subsection (2) or approves a modified rescue plan following an alteration under subsection (6)(b), the rescue plan shall, notwithstanding any other enactment, be binding on all the creditors or the class or classes of creditors, as the case may be, affected by the rescue plan in respect of any claim or claims against the eligible company and any person other than the company who, under any enactment, rule of law or otherwise, is liable for all or any part of the debts of the company.

Incurring of certain liabilities by process adviser

- 558ZAA.** (1) Any liabilities incurred by an eligible company during the rescue period which are specified in subsection (2) shall be treated as expenses properly incurred, for the purpose of section 558ZAB, by the process adviser.
- (2) The liabilities referred to in subsection (1) are those certified in writing by the process adviser, at the time they are incurred, to have been incurred in circumstances where, in the opinion of the process adviser, the survival of the eligible company as a going concern during the rescue period would otherwise be seriously prejudiced.

Priority

- 558ZAB.** (1) The remuneration, costs and expenses of a process adviser which have been confirmed under section 558ZZ(4) or (6) (other than expenses referred to in subsection (2)) shall be paid in full and shall be paid before any other claim, secured or unsecured, under any rescue plan or in any receivership or winding up of the eligible company to which he or she has been appointed.
- (2) Liabilities incurred by the eligible company to which a process adviser has been appointed that, by virtue of section 558ZAA, are treated as expenses properly incurred by the process adviser shall be paid in full and shall be paid before any other claim (including a claim secured by a floating charge), but after any claim secured by a mortgage, charge, lien or other encumbrance of a fixed nature or a pledge, under any rescue plan or in any receivership or winding up of the company.

- (3) In subsections (1) and (2), references to a claim shall be deemed to include references to any payment in a winding up of the eligible company in respect of the costs, charges and expenses of that winding up (including the remuneration of any liquidator).

CHAPTER 12

*General***Effect on certain sections where application to relevant court**

558ZAC. (1) The time limits specified in the provisions mentioned in subsection (2) are suspended for the period during which any proceedings under this Part are being considered by the relevant court.

(2) The provisions referred to in subsection (1) are—

- (a) section 558L(2),
- (b) section 558T(4),
- (c) section 558ZA(2), and
- (d) section 558ZA(4).

Power to apply to relevant court for determination of questions or concerning exercise of powers

558ZAD. (1) Each of the following:

- (a) the process adviser appointed in respect of an eligible company;
- (b) the directors of an eligible company;
- (c) the Director,

may apply to the relevant court to determine any question arising during the rescue period (including any question in relation to any exercise or proposed exercise of any of the powers of the process adviser).

(2) The relevant court, if satisfied that the determination of the question will be just and equitable, may accede wholly or partially to such an application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

Hearing of proceedings other than in public

558ZAE. Without prejudice to the relevant court's own discretion, the whole or part of any proceedings under this Part may be heard otherwise than in public if the relevant court, in the interests of justice, considers that the interests of the eligible company concerned or of its creditors as a whole so require.

High Court's power to remit proceedings to Circuit Court

- 558ZAF.** (1) This section applies where the process adviser determines under section 558H that any proceedings under this Part relating to an eligible company shall be brought in the High Court.
- (2) In any proceedings under this Part relating to the eligible company, the High Court may, where it considers that it would be reasonable for the proceedings to be dealt with in the Circuit Court, remit the proceedings to the Circuit Court.
- (3) Where the High Court is minded to remit proceedings under subsection (2), it may elect to deal with the application immediately before it where it considers that it would be more efficient for it to do so.
- (4) Notwithstanding subsection (3), the High Court may take into account whether it was reasonable for any proceedings under this Part to be brought in that court in making a costs order in relation to the proceedings concerned.
- (5) In deciding for the purposes of subsection (2) whether it would be reasonable for proceedings to be brought in the Circuit Court, the High Court shall have regard to all the circumstances, including in particular the need to minimise costs and promote efficiency.

Representation of bodies corporate at meetings held under this Part

558ZAG. For the avoidance of doubt, section 185 applies to any meeting of an eligible company held during the rescue period.

Retention of records

558ZAH. Where a process adviser is appointed in respect of an eligible company, the process adviser shall retain records in such form or manner as may be prescribed for a period of not less than 6 years after the completion of the activity to which the record relates.

Service of notices

- 558ZAI.** (1) This section applies where the process adviser is required or authorised by any provision of this Part to give a person a notice or other document.
- (2) Where the person has provided the process adviser with an email address under section 558I, notice shall be given by electronic means to that email address.
- (3) Where—
- (a) the person has not provided the process adviser with an email address under section 558I, or

- (b) the process adviser gives notice by electronic means to an email address provided by the person under that section but receives in response a failed delivery notification,
- notice shall be given in accordance with subsection (4).
- (4) Notice is given in accordance with this subsection if it is sent by post in a prepaid letter to—
- (a) in the case of an individual—
- (i) the address at which the individual ordinarily resides, or
- (ii) any other address provided by the individual for the purposes of this section,
- (b) in the case of a company, its registered office, or
- (c) in the case of any other body corporate or unincorporated body, its principal office or place of business.

Regulations to remove difficulties

- 558ZAJ.** (1) If, in any respect, any difficulty arises in bringing any provision of this Part into operation or in relation to the operation of any such provision, the Minister may by regulations do anything which appears to him or her to be necessary or expedient for removing that difficulty, for bringing that provision into operation or for securing or facilitating its operation.
- (2) A regulation made under subsection (1) may modify any provision of this Part which makes provision for, or in connection with, any administrative or procedural matter (including, in particular, the length of any period of time within which notice requires to be given under this Part) so far as may be necessary or expedient for carrying such provision into effect for the purposes aforesaid, but no regulations shall be made under this section in relation to any provision of this Part after the expiration of 2 years commencing on the day on which the provision came into operation.
- (3) Where regulations are proposed to be made under this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving the draft has been passed by each such House.”.

PART 3

MISCELLANEOUS AMENDMENTS OF COMPANIES ACT 2014

Amendment of section 2 of Principal Act

4. Section 2 of the Principal Act is amended, in subsection (1), by the insertion of the following definition:

“ ‘process adviser’ has the meaning assigned to it by section 558A;”.

Amendment of section 511 of Principal Act

5. Section 511 of the Principal Act is amended, in subsection (3)(d), by the substitution of “dissipation” for “disappearance”.

Amendment of section 587 of Principal Act

6. Section 587 of the Principal Act is amended by the insertion of the following paragraph after paragraph (aa):

“(ab) inform the creditors of the company of their power to appoint a committee of inspection under section 667;”.

Amendment of section 610 of Principal Act

7. Section 610 of the Principal Act is amended—

(a) in subsection (1)—

(i) by the insertion of “, or in the course of a rescue period under Part 10A in respect of an eligible company,” after “company”, where it secondly occurs, and

(ii) by the substitution of “liquidator, examiner or process adviser of the company” for “liquidator or examiner of the company”,

and

(b) by the insertion of the following subsections after subsection (8):

“(9) In assessing any application under this section, the court may take into account whether section 558S(5) applies to a director of a company.

(10) In this section, ‘eligible company’, ‘process adviser’ and ‘rescue period’ have the meanings assigned to them by section 558A.”.

Amendment of section 627 of Principal Act

8. Section 627 of the Principal Act is amended in the Table to the section—

- (a) in paragraph 1(a), by the insertion of “(including proceedings before the Workplace Relations Commission and the Labour Court)” after “proceeding”, and
- (b) in paragraph 1(b), by the insertion of “(including proceedings before the Workplace Relations Commission and the Labour Court)” after “proceeding”.

Amendment of section 666 of Principal Act**9.** Section 666 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1):
 - “(1) (a) When a winding-up order has been made by the court, the liquidator shall inform the creditors of the company of their power to appoint a committee of inspection under this section.
 - (b) When a winding-up order has been made by the court, the liquidator may and, if directed to do so by a creditor or creditors representing not less than one-tenth in value of the creditors of the company shall, summon a meeting of the creditors of the company for the purpose of determining—
 - (i) whether or not a committee of inspection is to be appointed, and
 - (ii) who are to be the members of the committee if so appointed.”,
 - (b) in subsection (2), by the substitution of “Subject to subsection (2A), at a meeting” for “At a meeting”,
 - (c) by the insertion of the following subsection after subsection (2):
 - “(2A) Where the employees of the company elect or appoint one of their number as an employees’ representative for the purpose of serving on any committee of inspection referred to in subsection (2), the person so elected or appointed shall be one of the persons appointed under that subsection.”,
- and
- (d) by the insertion of the following subsection after subsection (6):
 - “(7) If a liquidator, without reasonable excuse, fails to comply with subsection (1)(a), he or she shall be guilty of a category 4 offence.”.

Amendment of section 667 of Principal Act**10.** Section 667 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “Subject to subsection (1A), the creditors” for “The creditors”, and
- (b) by the insertion of the following subsection after subsection (1):

“(1A) Where the employees of the company elect or appoint one of their number as an employees’ representative for the purpose of serving on any committee of inspection as mentioned in subsection (1), the person so elected or appointed shall be one of the persons appointed under that subsection.”.

Amendment of section 668 of Principal Act

11. Section 668 of the Principal Act is amended—

- (a) in subsection (6) by the insertion of “, subject to subsection (6A),” after “office or”, and
- (b) by the insertion of the following subsection after subsection (6):

“(6A) Where—

- (a) the person who vacated office had been appointed by virtue of section 666(2A) or 667(1A), and
- (b) the employees of the company elect or appoint another of their number under section 666(2A) or, as the case may be, section 667(1A),

the person so elected or appointed shall, subject to subsection (7), be appointed to fill the vacancy.”.

Amendment of section 690A of Principal Act

12. Section 690A of the Principal Act is amended in subsection (11), in the definition of “creditors’ meeting”, by the insertion of the following paragraph after paragraph (f):

“(fa) section 558T;”.