

## **Chartered Accountants Ireland or CCAB-I material**

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### **Technical Release**

#### **TR 02/2016 - Companies Act 2014 Examiners - statutory changes (Updated April 2021)**

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## **INTRODUCTION**

Unless otherwise stated, all references to the Companies Act 2014 in this document refer to the Companies Act 2014 as enacted together with all subsequent amendments thereto as at the date of this release, including but not limited to the Companies (Accounting) Act 2017, the Companies (Statutory Audits) Act 2018 and the Companies (Miscellaneous Provisions) (COVID-19) Act 2020.

- 1.The provisions of Part 10, Examinerships, Companies Act, 2014, (“Part 10”) came into force on Monday 1 June 2015.
- 2.This Technical Release summarises key changes made by Part 10 to previous company legislation, which include:
  - petition to appoint an examiner to a “small company” can be made to the Circuit Court;
  - expanded requirements applicable to company’s notification of examiner’s appointment;
  - no liability shall attach to an examiner, nor will any legal or professional duty be contravened, where the examiner is exercising their powers in compliance with Section 524;
  - the examiner’s proposals can provide for a reduction in company capital.
- 3.This Technical Release is intended to assist members in understanding the changes made to company legislation governing the examinership process. However, it does not purport to be a detailed analysis of the provisions of Part 10.
- 4.Statutory references are to the relevant sections of Part 10 of the Companies Act 2014 unless otherwise indicated.

## **APPOINTMENT**

- 5.The petition to appoint an examiner may, where the company is “small” as defined by Sections 280A or 280B Part 6, Companies Act 2014 and 509(7)(b) and (8), be presented directly to the Circuit Court.
- 6.The Circuit Court can only appoint an examiner to a related company if that company is “small” (Section 517(8) and (9)).
- 7.The contents of the independent expert’s report on the survival prospects of all, or part, of the business, which must accompany the petition to appoint an examiner, are unchanged in section 511(3) of the Companies Act 2014.
- 8.As in earlier company legislation, Section 519 defines the capacity to act as examiner as a person who would be qualified to act as the company’s liquidator. Section 633 and 634, Part 11 of the Companies Act 2014, specify the qualifications required of a liquidator.
- 9.The existing requirement that various company documents bear a notice that an examiner has been appointed is extended by Section 531(6) to cover the company’s website and e-mails issued by it.

## **RESIGNATION OR REMOVAL**

- 10.Section 532 restates earlier legislation regarding resignation, filling of vacancy, etc.

## **POWERS**

- 11.Section 524 (9) provides no liability shall attach to an examiner, nor will any legal or professional duty be contravened, where the examiner is exercising their powers in compliance with Section 524. It should be noted that under Section 532, an examiner is personally liable on any contract entered into in the performance of functions, unless the contract explicitly provides that the examiner is not personally liable. The

examiner is entitled to an indemnity out of the company's assets in respect of that personal liability.

12.As before, liabilities incurred by the company while an interim examiner stands appointed cannot be certified by the examiner (Section 514).

13.The examiner's report can include proposals which provide for a reduction in the company's company capital (Section 542(6)(b)). However, if the Court considers that change would result in the company capital being "manifestly inadequate", it will either confirm the proposals subject to modification, or not confirm them at all.

#### **DUTIES**

14.The examiner remains under an obligation (Section 554(7)) to "in so far as is reasonably possible, make use of the services of the staff and facilities of the company to which the examiner has been appointed".

15.The examiner must provide a copy of their report to the Director of Corporate Enforcement (Section 534(6)). For those companies specified in Section 510(2)-(4), a copy must be sent also to the Central Bank of Ireland.

#### **ENFORCEMENT**

16.Where the Court revokes the confirmation of the examiner's proposals because the compromise was procured by fraud (Section 553), a copy of the court order is provided to the Director of Corporate Enforcement, in addition to the Registrar of Companies and (for certain companies) the Central Bank of Ireland.

#### **OTHER**

17.Pursuant to the Companies (Miscellaneous Provisions) (COVID-19) Act 2020 during the interim period (up until 9 June 2021), the period during which the examiner is to make their report can be further extended by court by up to 50 days in the exceptional circumstances described in that Act.