

Investigation of company's affairs by court appointed inspectors on application of Director

748. (1) On the application of the Director, the court may appoint one or more competent inspectors to investigate the affairs of a company and to report on those affairs in such manner as the court directs, if the court is satisfied that there are circumstances suggesting that—

(a) the affairs of the company are being or have been conducted with intent to defraud—

(i) its creditors;

(ii) the creditors of any other person; or

(iii) its members;

(b) the affairs of the company are being or have been conducted for a fraudulent or unlawful purpose other than described in paragraph (a);

(c) the affairs of the company are being or have been conducted in an unlawful manner;

(d) the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to some part of its members;

(e) the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to some or all of its creditors;

(f) any actual or proposed act or omission of the company (including an act or omission on its behalf) was, is or would be unfairly prejudicial to some part of its members;

(g) any actual or proposed act or omission of the company (including an act or omission on its behalf) was, is or would be unfairly prejudicial to some or all of its creditors;

(h) the company was formed for a fraudulent or unlawful purpose;

(i) persons connected with its formation or the management of its affairs have, in that connection, been guilty of fraud, misfeasance or other misconduct towards the company or its members; or

(j) the company's members have not been given all the information relating to its affairs which they might reasonably expect.

(2) The court's power of appointment under this section is without prejudice to its powers under section 747 and is exercisable notwithstanding that the company is in the course of being wound up.

(3) Inspectors appointed under this section may be or include an officer or officers of the Director.

(4) A reference in subsection (1) to the members of a company shall have effect as if it included a reference to any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

(5) In this section “court” means—

(a) save in the case of a company referred to in paragraph (b), the High Court, or

(b) in the case of a company that, in respect of the latest financial year of the company that has ended prior to the date of the making of the application under this section, fell to be treated as a small or medium company by virtue of section 350, the Circuit Court,

and, subject to subsection (7), all subsequent references to the court in this Part shall, as respects the powers and jurisdiction of the court with respect to an investigation on foot of an appointment made under this section by the Circuit Court, be read accordingly.

(6) For the purpose of paragraph (b) of subsection (5), if the latest financial year of the company concerned ended within 3 months prior to the date of the making of the application concerned, the reference in that paragraph to the latest financial year of the company shall be read as a reference to the financial year of the company that preceded its latest financial year (but that reference shall only be so read if that preceding financial year ended no more than 15 months prior to the date of the making of the application concerned).

(7) Subsection (5) does not confer jurisdiction on the Circuit Court to wind up any body corporate; however, that court, in exercise of its jurisdiction under this Part, may refer an inspectors' report made to it under this Part to the High Court which shall have the same jurisdiction to wind up any body corporate concerned as if the inspectors' report had been made to it in the first instance.

(8) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court—

(a) for the circuit in which the registered office of the company is situated at the time of the making of the application, or

(b) if there is no registered office of the company at that time, for the Dublin Circuit.

(9) 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.