

Prosecution of offences committed by officers and members of company

447. (1) If it appears to the receiver of the property of a company, in the course of the receivership, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the receiver shall forthwith report the matter to the Director of Public Prosecutions.

(2) Where the receiver reports a matter under subsection (1) to the Director of Public Prosecutions, the receiver 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 receiver and relating to the matter in question, as he or she may require.

(3) Where a foregoing report is made by the receiver, the receiver shall also report the matter to the Director of Corporate Enforcement.

(4) Where a matter is reported by the receiver under subsection (3) to the Director of Corporate Enforcement, the receiver 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 receiver and relating to the matter in question, as he or she may require.

(5) If, where any matter is reported under subsection (1) or (3) to—

(a) the Director of Public Prosecutions, or

(b) the Director of Corporate Enforcement,

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 following to give all assistance in connection with the prosecution which he or she is reasonably able to give.

(6) The persons referred to in subsection (5) are the receiver of the company and—

(a) every officer (past or present) of the company, and

(b) every agent (past or present) of the company,

other than the defendant in the proceedings.

(7) For the purposes of subsection (6), “agent”, in relation to a company, includes—

(a) the bankers and solicitors of the company, and

(b) 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.

(8) If any person fails or neglects to give assistance in the manner required by subsection (5), 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.

(9) Where any such application is made in relation to a receiver, the court may, unless it appears that the failure or neglect to comply was due to the receiver not having in his or her hands sufficient assets of the company to enable him or her so to do, direct that the costs of the application shall be borne by the receiver personally.