

Restriction undertaking — initiation of procedure that provides person opportunity to submit to restriction

852. (1) In this section—

“notice period” shall be read in accordance with subsection (3)(c);

“person” shall be read in accordance with subsection (2);

“restriction period” means the period of 5 years, as mentioned in the definition of “restriction” in section 849, for which the restrictions set out in that definition are to operate;

“specified date” shall be read in accordance with subsection (3)(b);

“underlying facts and circumstances” shall be read in accordance with subsection (3) (a).

(2) Subject to section 853 (6), where the Director has reasonable grounds for believing that a person falls within the description of the second-mentioned person in section 819 (1), namely a person who was a director of an insolvent company within the meaning of Chapter 3 (in this section referred to as the “person”), the Director may, in his or her discretion, deliver to the person, or to the person's duly authorised agent, the following notice.

(3) That notice is a notice in the prescribed form stating—

(a) the circumstances, facts and allegations that have given rise to that belief of the Director, citing the provisions of section 819 (1) and section 818 (1) ) and stating particulars of those facts and allegations (and the circumstances so stated, and those facts and allegations, of which particulars are so stated, are referred to together in this section as the “underlying facts and circumstances”),

(b) the date (referred to in this section as the “specified date”) that will, subject to subsection (5), be the date of commencement of the restriction period, if a restriction undertaking is given by the person,

(c) that during—

(i) such period as may be specified in the notice (referred to in this section as the “notice period”), being a period beginning on a day falling not less than 21 days after the date of the notice and expressed to end immediately before the specified date; or

(ii) in the event of a request under subsection (5) by the person being acceded to, the notice period as extended under that subsection;

the person may—

(l) notify the Director, in the prescribed form, of his or her willingness to give a restriction

undertaking; and

(II) return to the Director the restriction acceptance document duly signed;

(d) that during the notice period, or that period as so extended, the Director will refrain from making an application in respect of the person under section 819 arising from or in connection with the underlying facts and circumstances;

(e) that if the person, within the notice period or that period as so extended, does the things referred to in paragraph (c)(I) and (II), the Director shall not, after the expiry of that period, make an application in respect of the person under section 819 arising from or in connection with the underlying facts and circumstances.

(4) That notice shall also state—

(a) that the person may make a request, under subsection (5), for an extension of the notice period,

(b) the legal effect (for the person) of giving a restriction undertaking beginning on the specified date, and

(c) that if the person gives a restriction undertaking—

(i) the person may seek to be relieved (whether in whole or in part) from the undertaking only by applying to the court under section 822, and

(ii) that, on the making of such an application, the court may grant such relief only if it considers it just and equitable to do so, and then only on the terms and conditions as it sees fit.

(5) Where a notice is delivered under subsection (2), the Director may, at any time before the specified date, on the request of the person, where the Director considers it appropriate to do so for the purposes of extending the notice period (and postponing the commencement of the restriction period in consequence), substitute a later date for the specified date and, where such a date is so substituted, references in section 853 —

(a) to the notice period shall be read as references to the notice period as extended in pursuance of this subsection, and

(b) to the specified date shall be read as references to the date that has been substituted for it in pursuance of this subsection.