

Right to information and explanations concerning subsidiary undertakings

388. (1) Where a company (in this section referred to as the “holding company”) has a subsidiary undertaking, then—

(a) where the subsidiary undertaking is either—

(i) an existing company, a company registered under this Act or a body established in the State, or

(ii) a partnership or unincorporated body of persons having its principal place of business in the State,

it shall be the duty of the subsidiary undertaking and the statutory auditors, if any, of it to give to the statutory auditors of the holding company such information and explanations as the second-mentioned statutory auditors may reasonably require for the purposes of their duties as statutory auditors of the holding company,

(b) in any other case, it shall be the duty of the holding company, if required by its statutory auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as are mentioned in paragraph (a).

(2) If an undertaking, body or other person fails to comply, within 5 days after the date on which it is made, with a requirement made of it or him or her under subsection (1)(a) or (b), the undertaking, body or other person, and any officer of the undertaking or body who is in default, shall be guilty of a category 2 offence.

(3) In any proceedings against a person in respect of an offence under subsection (2), it shall be a defence to prove that it was not reasonably possible for the person to comply with the requirement under subsection (1)(a) or (b) to which the offence relates within the time specified in subsection (2) but that he or she complied with it as soon as was reasonably possible after the expiration of such time.

(4) In subsection (2) “officer”, in relation to an undertaking or body, includes any employee of the undertaking or body and, if it is a company, any shadow director and de facto director of it.