

Restriction on power of Director to require third party to produce certain books or documents

782. (1) The Director shall not exercise the power under section 780 (1)(c) to require a person referred to as the “third party”) to produce books or documents that may relate to any books or documents of a company unless—

(a) the Director is of the opinion that there are reasonable grounds for believing that the books or documents required to be produced and the books or documents of the company are related to one another; and

(b) subject to subsection (4), the Director has first taken the steps set out in subsection (2).

(2) The steps referred to in subsection (1)(b) are the following:

(a) the Director shall notify the third party stating—

(i) that the Director proposes to require the third party to produce books or documents that may relate to books or documents of the company;

(ii) the grounds for the Director's opinion referred to in subsection (1)(a); and

(iii) that the third party may make submissions to the Director within 21 days after the date of the notification as to why the third party believes the opinion of the Director is erroneous; and

(b) the Director shall have regard to those submissions before finally deciding whether to require the books or documents in question.

(3) In subsection (1)(a), the grounds for the opinion of the Director may include—

(a) grounds related to the relationship between the company and the person required to produce the books or documents;

(b) a common origin of the books or documents; or

(c) other similar considerations.

(4) The Director is not required to take the steps set out in subsection (2) if—

(a) the Director considers that compliance with those steps could result in the concealment, falsification, destruction or disposal of the books or documents concerned; or

(b) the books or documents concerned are merely the originals of any books or documents, copies of which have previously been produced to the Director in compliance with an earlier requirement made in exercise of the power under section 780 (1)(c).

(5) The third party shall not be obliged to comply with a requirement to produce documents in relation to a particular book or document if the third party would be entitled, by virtue of any law or enactment, to refuse to produce the book or document in any proceedings on the ground of any privilege applies or not).