



**SEANAD ÉIREANN**

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**BILLE NA gCUIDEACHTAÍ (LEASÚ) 2009  
COMPANIES (AMENDMENT) BILL 2009**

**LEASUITHE TUARASCÁLA  
REPORT AMENDMENTS**

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# SEANAD ÉIREANN

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## BILLE NA gCUIDEACHTAÍ (LEASÚ) 2009 —AN TUARASCÁIL

### COMPANIES (AMENDMENT) BILL 2009 —REPORT

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*Leasuithe  
Amendments*

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*\*Government amendments are  
distinguished by an asterisk.*

1. In page 3, line 30, after “1999” to insert the following:

“, TO AMEND SECTION 45 OF THE COMPANIES (AUDITING AND ACCOUNTING) ACT 2003 CONCERNING DIRECTORS’ COMPLIANCE STATEMENTS”.

—*Senators Joe O’Toole, David Norris.*

\*2. In page 5, line 37, to delete “subsections (2D) to (2F)” and substitute “subsections (2D) to (2G)”.

\*3. In page 6, lines 6 and 7, to delete “subsections (2D) to (2F)” and substitute “subsections (2D) to (2G)”.

4. In page 6, after line 47, to insert the following:

“(vii) the rights of any person who is the subject of the information under the Data Protection Acts 1988 to 2003.”.

—*Senators Ciaran Cannon, Maurice Cummins.*

\*5. In page 8, to delete lines 3 to 20 and substitute the following:

“(2F) Where an extended power of seizure is exercised, it shall be the duty of the officer—

(a) to carry out the determination or separation concerned as soon as practicable, and, in any event, subject to subsection (2G), within the prescribed period, after its exercise, and

(b) as respects anything seized in exercise of the power found not to be material information or, as the case may be, anything separated from another thing in the exercise of the power that is not material information, to return, as soon as practicable, and, in any event, subject to subsection (2G), within the prescribed period, after that finding or separation, the thing to its owner or the person appearing to the officer to be lawfully entitled to the custody or possession of it.

(2G) On application to the court by the Director or any person affected by the exercise of an extended power of seizure, the court may, if it thinks fit and having had regard, in particular, to any submissions made on behalf of the Director with regard to the progress of any investigation being carried on by the Director for the purpose of which the powers under this section had been exercised, give one or more of the following:

- (a) a direction that the doing of an act referred to in subsection (2F)(a) or (b) shall be done within such lesser or greater period of time than that specified in that provision as the court determines,
- (b) a direction with respect to the making, variation or operation of arrangements referred to in subsection (2D)(a) to (c) in relation to a thing concerned or a direction that such arrangements as the court provides for in the direction shall have effect in place of any such arrangements that have been or were proposed to be made,
- (c) a direction of any other kind that the court considers it just to give for the purpose of further securing the rights of any person affected by the exercise of an extended power of seizure, including, if the exceptional circumstances of the case warrant doing so, a direction that a thing seized be returned to its owner or the person appearing to the court to be lawfully entitled to the custody or possession of it, notwithstanding that the determination or separation concerned has not occurred,

and any such direction may—

- (i) relate to some or all of the things the subject of the exercise of the extended power of seizure,
- (ii) be expressed to operate subject to such terms and conditions as the court specifies, including, in the case of a direction under paragraph (c), a condition that an officer of the Director be permitted, during a specified subsequent period, to re-take and retain possession of the thing returned for the purpose of carrying out the determination or separation concerned (and, retain after the expiry of that period, that which is found to be material information or is material information).

(2H) An application under subsection (2G) shall be by motion and may, if the court directs, be heard otherwise than in public.

(2I) In subsection (2F) ‘prescribed period’ means—

- (a) in the case of paragraph (a) of it—
  - (i) unless subparagraph (ii) applies, 3 months, or
  - (ii) such other period as the Minister prescribes in consequence of a review that may, from time to time, be carried out by or on behalf of the Minister of the operation and implementation of the amendments effected by *section 5* of the *Companies (Amendment) Act 2009*,
- (b) in the case of paragraph (b) of it—
  - (i) unless subparagraph (ii) applies, 7 days, or
  - (ii) such other period as the Minister prescribes in consequence of such a review that may, from time to time, be carried out by or on behalf of the Minister,

but no regulations made to prescribe such a period shall be read as operating to affect any direction given by the court under subsection (2G)(a) in force on the commencement of those regulations.

(2J) The Minister may make regulations providing for such supplementary, consequential and incidental matters to or in respect of subsections (2A) to (2F) as he considers necessary or expedient.””.

6. In page 8, to delete lines 3 to 20 and substitute the following:

“(2F) Where an extended power of seizure is exercised, it shall be the duty of the officer—

- (a) to carry out the determination or separation concerned as soon as practicable after its exercise, and in any event, within 3 months or such further period as is permitted by the Court, and
- (b) as respect anything seized in exercise of the power found not to be material information or, as the case may be, anything separated from another thing in exercise of the power that is not material information, to return, as soon as practicable after that finding or separation, and in any event, within 7 days after the finding or separation, or such further period as is permitted by the Court, the thing to its owner or the person appearing to the officer to be lawfully entitled to the custody or possession of it.

(2G) Where an extended power of seizure is exercised and pending the determination or separation referred to at subsection 2F, the Court may give such directions concerning that which has been seized as the Court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—

- (a) the determination or separation, prior to the 3 month period referred to at subsection 2F, of all or part of that which has been seized,
  - (b) the return, prior to determination or separation, of all or part of that which has been seized, upon such terms as seem appropriate to the Court.”.
- Senators Ciaran Cannon, Maurice Cummins.*

7. In page 8, line 34, after “necessary” to insert “in accordance with subsection (2F)\*”.

*—Senators Ciaran Cannon, Maurice Cummins.*

[\*Note: This is the appropriate reference if amendment No. 6 is accepted.]

8. In page 14, between lines 33 and 34, to insert the following:

“Amendment of Act of 2003 — deletion of section 45 and insertion of the following alternative section 45.

11.—The following section is substituted for section 45 of the Act of 2003:

“45.—The Act of 1990 is amended by inserting the following in Part X:

“Directors’ compliance statement and related statement.

205E—(1) In this section—  
‘amount of turnover’ and ‘balance sheet total’ have the same meanings as in section 8 of the Companies (Amendment) Act 1986;

‘relevant obligations’, in relation to a company, means the company’s obligations under—

- (a) the Companies Acts,

- (b) tax law, and
- (c) any other enactments that provide a legal framework within which the company operates and that may materially affect the company's financial statements;

'tax law' means—

- (a) the Customs Acts,
- (b) the statutes relating to the duties of excise and to the management of those duties,
- (c) the Tax Acts,
- (d) the Capital Gains Tax Acts,
- (e) the Value-Added Tax Act 1972 and the enactments amending or extending that Act,
- (f) the Capital Acquisitions Tax Act 1976 and the enactments amending or extending that Act,
- (g) the statutes relating to stamp duty and to the management of that duty, and
- (h) any instruments made under an enactment referred to in any of paragraphs (a) to (g) or made under any other enactment and relating to tax.

(2) This section applies to—

- (a) a public limited company (whether listed or unlisted), and
- (b) a private company limited by shares,

but it does not apply to a company referred to in paragraph (a) or (b) that is of a class exempted under section 48(1)(j) of the Act of 2003 from this section or to a company referred to in paragraph (b) while that company qualifies for an exemption under subsection (9).

(3) The directors of a company to which this section applies shall include in their report under section 158 of the Principal Act a compliance statement—

- (a) acknowledging that they are responsible for securing the company's compliance with its relevant obligations,
- (b) confirming that the company has in place a compliance policy statement that is, in the opinion of the directors, appropriate for the company, and, if this is not the case, specifying the reasons,

(c) confirming that the company has in place appropriate procedures and arrangements that are, in the opinion of the directors, designed to secure compliance with its relevant obligations, and, if this is not the case, specifying the reasons, and

(d) confirming that the company's procedures and arrangements referred to in paragraph (c) have been reviewed during the financial year to which the report relates, and, if that is not the case, specifying the reasons.

(4) For the purposes of this section, a company's procedures and arrangements are considered to be designed to secure compliance with its relevant obligations and to be effective for that purpose if they provide a reasonable assurance of compliance in all material respects with those obligations.

(5) Where the directors of a company to which this section applies fail to comply with subsection (3), each director to whom the failure is attributable is guilty of an offence.

(6) A private company limited by shares qualifies for an exemption from this section in respect of any financial year of the company if either—

(a) its balance sheet total for the year does not exceed—

(i) €12,500,000, or

(ii) if an amount is prescribed under section 48(1) (l) of the Act of 2003 for the purpose of this provision, the prescribed amount,

or

(b) the amount of its turnover for the year does not exceed—

(i) €25,000,000, or

(ii) if an amount is prescribed under section 48(1) (l) of the Act of 2003 for the purpose of this provision, the prescribed amount.

205F.—(1) The auditor of a company to which section 205E applies shall undertake an annual review of the directors' compliance statement under subsections (3) of that section, having regard to information obtained by the auditor, or by an affiliate of the auditor within the meaning of section 205D, in the course of and by virtue of having carried out audit work, audit-related work or non-audit work for the company.

(2) Where, in the auditor's opinion, the directors have—

- (a) failed to prepare, or to cause to be prepared, a directors' compliance statement as required by section 205E(3), or
- (b) failed to include a directors' compliance statement in the directors' report as required by section 205E(3), or
- (c) made a compliance statement which is either false in a material particular or has been made recklessly to comply with section 205E(5) and (6),

the auditor shall report that opinion and the reasons for forming that opinion to the Director of Corporate Enforcement.

(3) Section 194(6) applies, with the necessary modifications, in relation to an auditor's compliance with an obligation imposed on him by or under this section as it applies in relation to an obligation imposed by or under section 194.

(4) A person who contravenes this section is guilty of an offence.”””.

—*Senators Joe O'Toole, David Norris.*