

Companies Act 2014 – Directors’ Fiduciary Duties and Multiple Directorships Held

Under the Companies Act 2014 (the ‘Act’) it is a duty of each Director of a company to ensure the Act is complied with by the company. In consenting to act as a Director the individual is required to acknowledge that they have “legal duties and obligations imposed by the Act, other statutes & common law” which is a new very specific statement. Another main legislative change has been the restatement and codification of Directors’ Fiduciary Duties which sets out very clearly the principle duties of a company Director.

Section 228 of the Act requires Directors to:

- Act in good faith in what the director considers to be in the company’s interests.
- Act honestly and responsibly in relation to the company’s affairs.
- Act in accordance with the company’s constitution and only exercise powers for allowed purposes.
- Not use company property for own or other’s use unless permitted by the constitution or shareholders.
- Not fetter discretion unless permitted by the constitution.
- Avoid conflicts of interest unless released by a company’s constitution or shareholders.
- Exercise care, skill and diligence.

In addition, the Act requires company Directors to have regard to interests of employees and shareholders.

What does this mean for Directors who hold a number of Directorships?

It is the responsibility of a Director to owe his or her fiduciary duty to each individual company and each individual company alone. Company Directors who hold many directorships could come under scrutiny as to how they are able to manage their fiduciary duties for each company that they are a Director of.

In accordance with Section 142 of the Act, at any particular time a Director may not be a Director of more than 25 companies. For Directors who are on the board of Public Limited Companies, companies with an overseas parent and that have been certified to have a real and continuous link with an economic activity in the State (Section 140), or on the board of two or more companies, within a group of companies as defined and specified in the Act, whereby such directorships will be counted as one; may be Directors of more than 25 Companies.

Essentially, Directors with 25 directorships or more, other than as identified earlier, may come under scrutiny of the Office of the Director of Corporate Enforcement. Areas that may come under scrutiny could be:

- Are these appointed persons of the board acting in the interest of the company only?
- Are they acting honestly and responsibly in conducting the affairs of that company and not in a way that would influence other companies that they are a Director of?

This information is for general information purposes and does not constitute as legal or any other advise

- Are they acting in accordance with the constitution of each particular company and not being confused by constitutions of other Companies that they are appointed to?
- Do they have sufficient time to commit to each individual company?

Although Directors' Fiduciary Duties existed in common law and statute previously, now that they have been codified in the Act and individuals must acknowledge such duties in consenting to be a Director, Directors should be mindful of them when taking on multiple directorships and weather they have the capacity to carry out their fiduciary duties to the full extent required and in accordance with the Act.

If you have any further queries please call Anna or Amy on 00353 (0) 91 7048801

This information is for general information purposes and does not constitute as legal or any other advise