

COMPANIES ACT 2014

DIRECTOR'S DUTIES

Company Directors hold a position of trust in a company and it is from this position that a fiduciary duty arises. Directors are required to place the interests of the company ahead of their own. The duties and responsibilities of Directors are consolidated in part 5 of the Companies Act 2014 (the Act). Currently the Companies Act does not codify fiduciary duties of Director's, however, these duties are now codified in the new Act which develops largely from common law and equitable principles. The codification of Directors duties will ensure that legislation becomes more accessible and transparent.

Who does the Act apply to?

Under the Act Directors' duties and requirements will apply whether Directors are formally appointed or are de facto or shadow Directors. As confirmed in the Act it is the responsibility of the Director and not the Company Secretary to ensure compliance of a company.

Fiduciary duties of Directors

The collated fiduciary duties of Directors are outlined in Part 5 of the Act and in this regard a Director of a company shall:

- act in good faith, in what the director considers to be the best interests of the company;
- act honestly and responsibly in relation to the conduct of the affairs of the company;
- act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law;
- not use the company's property, information or opportunities for his or her own or anyone else's benefit unless; (i) this is expressly permitted by the company's constitution; or (ii) the use has been approved by a resolution of the company in general meeting;
- not agree to restrict the Director's power to exercise an independent judgment unless this is permitted by the company's constitution or entered into the company's interests;
- avoid any conflict between the Director's duties to the company and the Director's other interests;
- to exercise care, skill and diligence;
- to have regard to the interests of the company's employees and members.

Other Duties Owed by Directors

Contained in Part 5 of the Act are other certain duties that a Director owes to a company. They can be summarised as follows:

- Ensure that the Company Secretary has the necessary skills to undertake the role required by the Act.
- Directors must disclose any interests he or she has in any contracts made by the company.
- Acknowledge the existence of their duties by signing a declaration to that effect.
- Directors are to take into account the interests of the members and employees of the company.
- Ensure the requirements of the Companies Act are complied with.
- Directors of large companies to confirm adherence with tax laws, acknowledge their responsibilities and confirm no category 1 and 2 offences in the Directors Compliance Statement.

A Breach of Directors Duty

A breach of a Directors duty will require the Director to account to their company for any gains made by them and compensate their company for any loss that occurred as a result of a breach of their duties.

A Director will be subject to an objective standard of care, skill and diligence. The test measures what can reasonably be expected of any Director in the particular role, and will allow for a higher standard to be expected of those with greater knowledge and experience. In other words, the more expertise a person has the more that will be expected of them.

The court may grant relief from the liability that resulted from a Directors breach of duty if it is satisfied that the Director has acted honestly and reasonably.

How Can BDO Help?

Should you wish to discuss your business requirements and how you will be impacted by any aspect of the Companies Act, or if you have any queries in general, please contact the **Corporate Secretarial Department** at **+353 (0)1 470 0000**.