

Company Law

The Companies (Amendment) Act 2009 came into effect on 12 July 2009. The main provisions:

- Increased powers have been given to the Director of Corporate Enforcement (**DCE**).
- All officers of a company are guilty where a loan made to a director in breach of the legislation.
- Disclosure obligations of transactions between licensed banks and their directors have been expanded.
- The residency rules for Irish companies requiring an Irish resident director have been changed to require at least one director to be resident in the EEA.

POWERS OF THE DIRECTOR OF CORPORATE ENFORCEMENT

The powers of search and seizure of the DCE have been extended and strengthened.

The changes:

- Extend the powers of the DCE to enter and search premises and the seizure and removal of information in either hard copy or electronic form and subsequent examination elsewhere.
- On application the validity of a search warrant under which the DCE may enter and search a premises may be extended beyond the existing one month period.
- Seizure of information that is claimed to be legally privileged on a sealed basis pending determination by the High Court whether the information is legally privileged.
- Give the DCE a specific right of access to and the power to take copies of the statutory register that records the director's declaration of his or her interest in any contract.

TRANSACTIONS WITH DIRECTORS

The Act expands the legislation dealing with loans to directors (or connected persons) which are in breach of the Companies Acts, by making every officer of the company who is in default guilty of an offence. Previously only those directors who were in wilful default and authorized or permitted the loans committed an offence.

A company's accounts must disclose loans made by a company to its directors and to persons connected with them.

In the case of a licensed bank:

- The new powers are in addition to existing rules of the Financial Regulator.
- The loans to each individual director must be disclosed including the maximum liability during the financial year.
- The aggregate of loans to a person connected with a director must be disclosed including the aggregate maximum due during the financial year.

A company that is a licensed bank and its holding companies must continue to maintain a register of loans to directors and the register must be made available to the DCE. A licensed bank must also prepare a statement of transactions by directors and connected persons, that is made available for inspection by the shareholders before and at the AGM. However, if the particulars of these transactions are included in the company's accounts then no separate statement needs to be made at the AGM. The statement does not require the disclosure of information if it relates to transactions made in the ordinary course of business and on normal commercial terms.

Breach of the disclosure requirements is a criminal offence by the company and by every director, though it is a defense for a director to show that he or she took all reasonable steps for securing the company's compliance.

DIRECTORS RESIDENCY REQUIREMENTS

The Act amends the requirement in place since 1999 that at least one director of an Irish company is resident in the State. Now a director that is resident in an EEA Member State (this includes all EU countries, Iceland, Norway and Liechtenstein) will suffice or alternatively there is still the option to put in place a bond instead of having such a director. The Act also clarifies the circumstances in which a company is to be regarded as having a real and continuous link with one or more economic activities carried on in the State. Such a link removes the requirement for having a resident director.

Further information on this topic or on any company law matter is available from Alan Browning or Dawn Byrne or from your usual contact in LK Shields Solicitors.

About LK Shields Solicitors



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