



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Directors Duties During the Ongoing Crisis

by **Colm Hanley**

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Directors, take note. Your duties have never been so important.

Directors of Irish companies will no doubt be aware of the many challenges their companies have faced over the last six months therefore, it is an opportune time to remind directors of the importance of fulfilling their statutory and fiduciary duties and responsibilities along with their other obligations.

The additional burdens and restrictions resulting from the COVID-19 pandemic will be a constant for some time to come.

The fiduciary duties of directors are codified in law and include the following: to act in good faith and in the best interests of the company; to act honestly and reasonably in relation to the affairs of the company; and to exercise due care, skill and diligence.

To assist directors in the discharge of their duties, the Companies Registration Office has provided an extension to filing deadlines; the Office of the Director of Corporate Enforcement has issued guidance to directors of companies at risk of insolvency; and emergency legislation has been enacted to provide further assistance to companies including the Companies (Miscellaneous Provisions (Covid-19)) Act 2020.

In addition, set out below are some other existing mechanisms that directors can use to assist them with the performance of their duties and responsibilities. While these will certainly assist directors in discharging their statutory obligations in the short term, they by no means alleviate them from their duties.

Board meetings

Directors must still fulfil their duties by making collective decisions in the best interests of the company. Such decisions are usually made when the directors meet in person for a board meeting, however due to travel restrictions and restrictions on gathering, this has become a logistical impossibility. However, the Companies Act 2014 (the "Act") provides that board meetings may be held remotely by video or teleconference and the meeting will be deemed to have taken place either where the majority of the directors are located, where the chairperson is located or such other place as the meeting itself may decide.

The board is also entitled to make decisions by way of a written resolution of the directors and these can generally be signed by each director in counterpart, thus relieving the logistical challenge of making collective decisions.

Companies should however seek the appropriate tax advice to ensure that the company is seen to be managed and controlled within Ireland.

Delegation of authority

If a director becomes unavailable for any reason, it is possible for them to delegate authority to another person in limited circumstances. For example, a director can appoint another person as their alternate, or the board can appoint an authorised person to do certain acts on behalf of the company in accordance with Section 40 of the Act. It is also possible for the company to put in place a power of attorney.

Delegation of such authority should only be used as a temporary measure when directors are not available to sign documents and should not be used as a long-term solution. While directors can delegate certain of their authorities to other individuals, they cannot delegate their statutory responsibilities.

Financial position

The board of directors has a duty to protect the financial position of the company and it is important to be aware that if a business is at risk of becoming insolvent, they owe a duty not to worsen the position for the company's creditors as this may result in the directors becoming personally liable for the debts of the company.

We can help

At LK Shields, we can provide your board of directors with comprehensive training to assist them in discharging their important statutory duties.

If you, or a board on which you sit, require assistance with any of your statutory duties, our highly experienced company secretarial team is on hand to assist. Please contact a member of our team.

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