

Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

Information Book 4 **Members and Shareholders**

Decision Notice D/2011/1

The Principal Duties and Powers of

Members and Shareholders

under the Companies Acts 1963-2009

Decision Notice D/2011/1

The Principal Duties and Powers of

Members and Shareholders

under the Companies Acts 1963-2009

Copyright Statement

The contents of this document are the copyright of the Office of the Director of Corporate Enforcement (“the ODCE”). However, in compliance with the Re-use of Public Sector Information Regulations 2005 (S.I. 279 of 2005) the ODCE encourages the re-use of all information that it produces.

Accordingly, this document may be reproduced and/or re-used, subject to the latest PSI licence available at www.psi.gov.ie. You may re-use this document, or the information therein, free of charge in any format, provided that:

- the reproduced information is accurate;
- it is used for a lawful or proper purpose;
- the source of the information and copyright is clearly acknowledged;
- the information is not used for the principal purpose of advertising or promoting a particular product or service.

Disclaimer

Nothing herein should be construed as a representation by, or on behalf of, the ODCE as to its definitive interpretation of any of the provisions of the Companies Acts 1963 to 2009 or as an authoritative interpretation of any law.

Independent legal advice should be sought in relation to the effects of any legal provision.

The Director of Corporate Enforcement accepts no responsibility or liability howsoever arising from any errors, inaccuracies or omissions in the contents of this document. The Director reserves the right to take action, which may or may not be in accordance with the provisions of this document.

Contents

1.0	Introduction	4
2.0	Principal Duties and Powers of Members and Shareholders	5
2.1	What is a Member	5
2.2	What is a Shareholder	5
2.3	Duties of Members and Shareholders	5
2.4	Rights and Powers of Members and Shareholders	6
2.4.1	Transfer of Shares	6
2.4.2	Right to a Dividend	6
2.4.3	Shareholders' Statutory Pre-emption Rights (Private Companies only)	6
2.4.4	Right to Participate in a Winding Up	7
2.4.5	Rights Regarding Members' Meetings	7
	■ Annual General Meetings (AGM)	7
	■ Extraordinary General Meetings (EGM)	8
	■ Resolutions	8
	■ Right to Notice of Meetings	9
	■ Polls	9
	■ Proxies	10
2.4.6	Members' Right to Information	10
2.4.7	Members' Powers where the Company is in Default	11
2.4.8	Right of Members to Apply for the Restoration of a Company which has been Struck Off the Register of Companies	11
2.4.9	Members' Right to Seek an Investigation of a Company	11
2.4.10	Right to Petition for the Winding Up of a Company	12
2.4.11	Right to Petition for Relief in Cases of Oppression	12
3.0	Penalties Under the Companies Acts	13
3.1	Penalties for Criminal Offences	13
	Court Imposed Penalties	13
3.2	Civil Penalties	13
	Disqualification	13
	Restriction	13
	Strike Off	14
4.0	Useful Addresses	15
Appendix A	Classes of Shares	16
	Introduction	16
	Ordinary Shares	16
	Preference Shares	16
	Redeemable Shares	16
	Bonus Shares	16

1.0 Introduction

The Companies Acts 1963-2009 contain extensive provisions detailing how the affairs of companies are to be conducted. These provisions describe how the various participants in companies should discharge their duties and obligations. In addition, participants are accorded substantial rights and powers in order to enable them to assert their rights and, if necessary, defend their personal and/or corporate interests.

The Director of Corporate Enforcement is of the view that the extensive requirements of the Companies Acts make it difficult for many non-professional participants in company affairs to be well informed of their rights and obligations under the law. This has, in part, contributed to an inadequate standard of compliance with company law in the past.

Section 12(1)(b) of the Company Law Enforcement Act 2001 specifies that a function of the Director is “*to encourage compliance with the Companies Acts*”. Consistent with this remit, the Director has issued a series of information books. These Information Books were first issued in November 2001, and this edition updates those books for changes in the law up to the end of 2010. There are information books on the following topics:

Information Book 1 – Companies

Information Book 2 – Company Directors

Information Book 3 – Company Secretaries

**Information Book 4 – Members and
Shareholders**

Information Book 5 – Auditors

Information Book 6 – Creditors

**Information Book 7 – Liquidators,
Receivers &
Examiners**

In addition to information on the relevant duties and powers, each book contains information on the penalties for failure to comply with the requirements of the Companies Acts and useful addresses and contact points.

Each book has been prepared for use by a non-professional audience in order to make the main requirements of company law readily accessible and more easily understandable.

The Director of Corporate Enforcement considers it important that individuals who take the benefits and privileges of incorporation should be aware of the corresponding duties and responsibilities. These information books are designed to increase the awareness of individuals in relation to those duties and responsibilities.

The Director wishes to make clear that this guidance cannot be construed as a definitive legal interpretation of the relevant provisions. Moreover, it must be acknowledged that the law is open to different interpretations. Accordingly, readers should be aware that there are uncertainties in how the Courts will interpret the law, particularly when the law is applied to the specific circumstances of specific companies and individuals.

It is important to note that where readers have a doubt as to their legal obligations or rights, they should seek independent professional legal or accountancy advice as appropriate.

As changes are made to company law in the future, the Director intends to keep this guidance up to date. He also welcomes comment on its content, so that future editions can remain as informative as possible.

**Office of the Director of Corporate
Enforcement**

October 2011

2.0 Principal Duties and Powers of Members and Shareholders

2.1 What is a Member

The initial subscribers to a company's memorandum of association are deemed to have agreed to become 'members' of the company. Any other person who agrees to become a member of a company and whose name is entered in its register of members will become a member of the company. Essentially, a member is a person who participates in the capital of a company and is registered as such.

The register of members is a register which must be kept by every company¹. The register must ordinarily be kept at the company's registered office. However, it may be kept elsewhere (although not outside the State) for the purposes of being updated etc. Every company is required to notify the Registrar of Companies of the location at which the register is kept and of any change in that address.

The register is open to inspection to every member free of charge and to any member of the public on payment of a small fee.

It must set out the following information:

- members' names;
- members' addresses;
- number of shares held by each member (in the case of companies having a share capital);
- the date on which each person was entered in the register;
- the date on which each person ceased to be a member of the company.

2.2 What is a Shareholder

A shareholder is a person who holds a share or shares in a company. A member of a company which is limited by shares must be a shareholder in the company. In practical terms, a shareholder will invariably be a member of a company. However, it should be noted that a person who purchases shares in a company, while being a shareholder from the date of purchase, will not become a member of the company until their name is entered into the register of members.

A company may be permitted by its memorandum and articles of association to issue different classes of shares which may differentiate between the rights of the shareholders in the company.

Further details on the classes of shares which may be issued are set out in Appendix A.

2.3 Duties of Members and Shareholders

The principal duty of a member who is a shareholder in a limited liability company with share capital is to pay the company any outstanding amount of the purchase price agreed for the shares allotted to him or her. This sum becomes payable either where the company makes a call for funds or, in circumstances where the terms of issue of the shares provide for the payment of instalments, on the payment date. Shareholders in a company with unlimited liability are liable without limit for the debts of the company where it is insolvent i.e. unable to pay its debts. Readers should refer to Information Book 1 dealing with Companies for further information on limited and unlimited liability and share capital.

¹ Section 116 Companies Act, 1963 as amended.

2.4 Rights and Powers of Members and Shareholders

The articles of association of a company set out the powers of members and those powers which are delegated by the members to the directors of the company.

The articles generally provide that the business of the company is managed by the directors, subject to the provisions of the articles of association and to such directions given by the members in a general meeting.

A number of fundamental matters must be ratified by the members, such as an alteration of the company's articles of association. By amending the articles of association, members can alter their relationship with the directors.

2.4.1 Transfer of Shares

A member's shares in a company are transferable personal property. In a private company however, restrictions must be placed on the transfer of shares (see section 2.4 of Information Book 1 for further information on private companies). This restriction is normally implemented by granting the directors of a private company the discretion to refuse to register the transfer of shares to a person of whom they do not approve and/or requiring the shareholder who wishes to sell their shares to first offer those shares for sale to the existing members of the company.

2.4.2 Right to a Dividend

A dividend is a distribution of certain of the company's assets to its shareholders (see below). Dividends can only be proposed by the directors. Where the directors propose a dividend, it must then be approved by the members. There is no legal obligation on a company to declare a dividend even where there are sufficient distributable profits available, unless its articles or memorandum of association require it to. However, once a final dividend (i.e. as opposed to an interim

dividend) is declared on a shareholder's share, that shareholder is entitled to payment and in the event of non-payment can sue the company for arrears in the same way as any ordinary creditor may sue for a debt.

A dividend can only be paid out of a company's profits which are available for distribution. The profits available for distribution are the company's net accumulated realised profits. In simple terms this means that only the company's aggregate profits less losses can be used to pay dividends. Other company profits and reserves, for example:

- unrealised profits i.e. profits which have not as yet crystallised, or;
- share premium i.e. any premium charged over and above the nominal value of a share on issue

cannot be used for the purposes of paying a dividend.

A public limited company (plc) can only make a distribution where its net assets (i.e. assets less liabilities), following the distribution, are not less than the aggregate of its called-up share capital and its undistributable reserves (undistributable reserves are certain reserves that are not permitted to be distributed e.g. share premium).

2.4.3 Shareholders' Statutory Pre-emption Rights (Private Companies Only)

Section 23 of the Companies (Amendment) Act, 1983 gives the existing members of a *private* company a statutory 'pre-emption' right. This means that, where new shares in the company are issued, the existing shareholders have an automatic right of first refusal to purchase these shares in proportion to their existing shareholdings. Parties other than the existing shareholders will, therefore, only be entitled to purchase newly issued shares in the company if the existing shareholders decline to exercise their pre-emption rights.

Under the statutory pre-emption scheme, the offer of shares to the existing shareholders must be served to the members in the same manner as notices of general meetings and must provide a period of not less than twenty one days during which the offer can be accepted and during which the offer cannot be withdrawn².

The statutory pre-emption rights set out above can generally be removed by the memorandum of association, the articles of association or by a special resolution of the company (a special resolution is a resolution passed by 75% of those members voting). However, where a resolution to this effect is to be put before a meeting of the company, in addition to the notice of the meeting, the directors must also furnish the members with a written statement explaining their reasons for the proposed departure from the statutory pre-emption scheme.

Statutory pre-emption rights are not given:

- to the holders of preference shares (see Appendix A for an explanation of preference shares);
- where the allotment is an allotment of preference shares
- where the allotment of shares is in respect of an employees' share scheme;
- where the allotment is to be paid for, either wholly or partly, in non-cash consideration;
- as stated previously, where the memorandum or articles of association of a private company, or a special resolution of a general meeting of the company, exclude the operation of section 23 of the Companies (Amendment) Act, 1983.

2.4.4 Right to Participate in a Winding Up

A shareholder has the right to participate in the winding up of a company (a winding up is the orderly termination resulting in the legal dissolution of the company). Once the creditors and expenses of the liquidator (the liquidator is the person appointed to conduct the dissolution of the company) have been paid, any remaining funds are returned to the shareholders in proportion to their shareholdings, unless the articles of association provide otherwise.

2.4.5 Rights Regarding Members' Meetings

The members of a company exercise control over the company at its meetings. The main statutory provisions concerning meetings of a company are set out at sections 131 to 146 of the Companies Act, 1963 (as amended). All companies, except single member companies, must in each year hold an annual general meeting (AGM) and not more than fifteen months should elapse between AGMs³.

Annual General Meetings

At an AGM, a company will generally consider ordinary business, such as:

- the directors' recommendation to declare a dividend, if a recommendation has been made;
- the financial statements, the directors' report and the auditor's report (where applicable);
- the election of persons as directors in the place of those retiring;

² Section 23(7) and 23(8) Companies (Amendment) Act, 1983 as amended.

³ Under the provisions of article 8 the European Communities (Single Member Private Limited Companies) Regulations, 1994 (S.I. 275 of 1994), the sole member of a single member private limited company can decide to dispense with the holding of an annual general meeting of the company. See also Appendix F to Information Book 1 for further information on Single-Member Private Limited Companies.

- the re-appointment of the outgoing auditors or the appointment of new auditors and the fixing of auditors' remuneration;
- other business, such as the amendment of the memorandum or articles of association of the company, which is known as special business (and which requires the tabling of special resolutions – see section on Resolutions below).

A member of the company can apply to the Director of Corporate Enforcement to call or direct the convening of an AGM where one is overdue⁴.

Extraordinary General Meetings

Any meeting of a company which is not an AGM is known as an extraordinary general meeting (EGM). Directors may generally call an EGM where they see fit, for example where they wish to obtain the prior approval of members before taking a certain course of action. In addition, the directors are obliged to convene an EGM in certain circumstances e.g. where the company's net assets (i.e. total assets less total liabilities) have fallen to 50% or less of its called-up share capital⁵.

A member or several members of a company, who together hold not less than 10% of the paid up share capital with voting rights in the company or in the case of a company not having a share capital, representing not less than 10% of the voting rights of the company, can requisition the directors of the company to call an EGM. For a company which is traded on a regulated market, members holding not less than 5% of the paid up capital can requisition for a meeting. To do so, they deposit a signed requisition at the company's registered office, stating the objects

(i.e. purpose) of the EGM⁶. Once this is done, the directors must convene an EGM within 21 days of the date of requisition, and the meeting must be held within two months.

If the directors do not do so, the requisitionists or any of them representing over half the voting rights of the requisitionists may themselves convene a meeting which must be held within three months of the date of deposit of the requisition. Where it is impractical to call a general meeting or to conduct the meeting in accordance with the articles of association or the Companies Acts, any member entitled to vote at the meeting may apply to the High Court, and the Court may order that such a meeting be held in such a manner as it thinks fit⁷.

The Court can, for instance, declare that a meeting can take place with only one member of the company present.

Resolutions

Decisions of the members at a general meeting are made by resolution. All resolutions must be passed in accordance with the requirements of the Companies Acts and the articles of association. Most of the standard business conducted at AGMs (e.g. consideration of the company's financial statements, election of directors and auditors, etc.) is carried out by way of ordinary resolution, which merely requires a simple majority i.e. a majority of in excess of 50% of those members voting.

⁴ Section 131(3) Companies Act, 1963 as amended.

⁵ Section 40(1) Companies (Amendment) Act, 1983.

⁶ Section 132 Companies Act, 1963 as amended.

⁷ Section 135 Companies Act, 1963.

Special resolutions are used to conduct certain business at EGMs and AGMs, such as the alteration of the articles of association. For special resolutions, a qualified majority of 75% is required⁸.

In the case of a single member company, the requirement to pass a resolution is replaced by a procedure whereby a written decision is taken by the sole member.

Right to Notice of Meetings

At least 21 days' notice must be given in writing of an AGM. In the case of an EGM, 7 days' notice is required for private companies and 14 days for public companies⁹. However, 21 days is usually required in order to pass a special resolution, unless 90% of the members of the company agree to shorter notice¹⁰. The 7 day period (private companies) can be shortened where the members and the company's auditors agree to such shorter notice. Extended notice of 28 days must be given under the following circumstances:

- where a resolution to remove a director is proposed, unless the articles of association of the company provide otherwise¹¹, or;
- where a resolution to replace an auditor is proposed at an AGM or a resolution to remove an auditor before the expiration of his term of office is proposed¹².

To be valid, a meeting must be properly convened by notice, a quorum must be present (i.e. a minimum number of members), and the meeting must be presided over by a Chairman. A quorum is generally fixed at two members in the case of a private company and three in the case of a public company. Special resolutions

and certain other significant resolutions must be forwarded by the company to the Registrar of Companies within 15 days of their being passed. Where a company's articles of association so provide, a resolution in writing signed by all of the members entitled to attend and vote on such a resolution at a general meeting is as valid and effective as if the resolution had actually been passed at a general meeting.

Polls

Table A of the First Schedule to the Companies Act, 1963 sets out a standard set of Articles of Association. On incorporation a company can choose to use these articles or, alternately, to draw up its own.

The standard articles provide that every resolution shall be decided by a show of hands unless a poll is demanded. The standard articles then go on to set out when, and by whom, a poll may be demanded. Unless a poll is demanded, a declaration by the Chairman that a resolution has been carried or lost on a show of hands will be conclusive evidence of the proceedings.

Under the standard articles of association, a poll (vote) may be demanded as follows:

- by the Chairman of the meeting, or;
- by at least three members in person or in proxy¹³, or;
- by any member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having a right to vote at the meeting, or;

⁸ A qualified majority of 75% means 75% of the votes cast (section 141 Companies Act, 1963).

⁹ Section 133 Companies Act, 1963 as amended.

¹⁰ Section 141 Companies Act, 1963.

¹¹ Section 182(2) Companies Act, 1963.

¹² Section 161(1) Companies Act, 1963 as amended.

¹³ A proxy is someone nominated by a member to exercise their vote on their behalf – see also next section: Proxies.

- by a member or members holding shares conferring voting rights, being shares on which an aggregate sum has been paid up equal to at least 10% of the total amount paid up on all voting shares.

The members of a company can of course alter the terms of the standard articles of association on incorporation or subsequently (provided that 75% of the members agree). However, where the articles are amended with regard to when a poll can be demanded, any changes will be void if they seek to have any of the following effects on entitlement to demand a poll¹⁴:

- to exclude the right to demand a poll at a general meeting (other than on the election of a Chairman and on the adjournment of the meeting)
- to make ineffective a demand made by any of the following parties:
 - not less than 5 members having the right to vote;
 - a member or members representing not less than one tenth of the total voting rights of all the members having a right to vote, or;
 - a member or members holding shares in the company conferring a right to vote, being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all shares conferring that right.

Proxies

Any member of the company who is entitled to vote at a general meeting of the company can appoint a 'proxy'. A proxy is a person nominated by the member to attend the meeting and to exercise the member's vote on their behalf. A proxy is also entitled to speak at the meeting on behalf of the member.

Under the standard form articles (as set out in Table A), the following provisions apply to proxies:

- the proxy must be nominated in writing and the nomination must be signed by the member if on behalf of an individual;
- if the proxy is nominated on behalf of a company, the appointment must be stamped with the company seal;
- the appointment must be furnished to the company at least 48 hours prior to the meeting.

2.4.6 Members' Right to Information

A member of a company has the right to certain information concerning the company. Members are entitled, *inter alia*, to:

- a copy of the memorandum and articles of association of the company and any Act of the Oireachtas which alters the memorandum. Prospective members should read a company's memorandum and articles of association in order to apprise themselves of their rights as members and the company's rules and powers;
- inspect and obtain copies of the minutes of general meetings and resolutions;
- inspect and obtain copies of the various registers kept by the company, including the register of members, the register of directors and secretaries and the register of directors' and secretary's interests;
- obtain a copy of the unabridged financial statements, directors' report and auditors' reports (where applicable);
- obtain copies of the unabridged financial statements of any subsidiary company for the preceding ten years.

¹⁴ Section 137 Companies Act, 1963.

2.4.7 Members' Powers where the Company is in Default

Where a company or any of its officers is in default in complying with any provision of the Companies Acts, a member can serve a notice on the company requiring the default to be made good within 14 days. If the company or officer fails to make good the default, a member can apply to the High Court for an order directing the company or officer to make good the default¹⁵. The Director of Corporate Enforcement also has the power to apply to the Court for this remedy.

2.4.8 Right of Members to Apply for the Restoration of a Company which has been Struck Off the Register of Companies

A company can be struck off the register of companies by the Registrar of Companies under the following circumstances:

- where the company has failed to make an annual return;
- where the company has failed to make a statement of its particulars to the Revenue Commissioners, or;
- where the company is not carrying on business.

Where a company is struck off as a consequence of failing to file an annual return the liability, if any, of every director, officer and member of the company continues and may be enforced as though the company had not been dissolved¹⁶.

If any member (or officer or creditor) of the company is aggrieved at the company's strike off, they can apply to the Registrar of Companies for the restoration of the Company within 12 months of the strike off. Provided that the Registrar is satisfied that all outstanding documents have been filed and all outstanding fees paid, he can restore

the company to the register¹⁷. Where the Registrar restores the company to the register, the company is deemed to have continued in existence as though it had not been struck off.

After the 12 months period referred to above has expired, any member (or officer or creditor) of the company can apply to the High Court to have the company restored to the register (provided that the application is made within 20 years of strike off). Where the Court is satisfied that it would be just to restore the company to the register, the company is deemed to have continued in existence as though it had not been struck off. However, the Court can also order, if it considers it appropriate, that the officers (or any one of them) be held personally liable for any debts incurred by the company during the period of strike off¹⁸.

For Property Management Companies the timeframe to apply for restoration to the Registrar of Companies has been extended to 6 years by the Multi-Unit Developments Act 2011¹⁹.

2.4.9 Members' Right to Seek an Investigation of a Company²⁰

Certain qualifying members, namely:

- one hundred members of a company, or;
- those holding 10% or more of the paid up share capital of the company (or in the case of a company not having a share capital, at least 20% of the members)

¹⁷ Section 12C(1) Companies (Amendment) Act, 1982.

¹⁸ Section 12(B)(4) Companies (Amendment) Act, 1982.

¹⁹ Other administrative requirements may apply in such cases. More information on this is available from the Companies Registration Office at www.cro.ie. The Multi-Unit Developments Act 2011 is not part of the Companies Acts and accordingly the ODCE has no role in enforcing any element of that Act.

²⁰ Section 7 Companies Act, 1990, as amended.

¹⁵ Section 371 Companies Act, 1963 as amended.

¹⁶ Section 12B(1) Companies (Amendment) Act, 1982.

can apply to the High Court for the appointment of one or more Inspectors to investigate and report on the affairs of a company. Where the Court appoints an Inspector, it specifies the precise matters into which inquiries should be made. Where members make such an application, they may be required to give security to cover the costs of the investigation. Inspectors appointed under this section take their directions from, and report to, the High Court.

2.4.10 Right to Petition for the Winding Up of a Company

A member has the right to petition the High Court for the winding up of a company on a number of grounds²¹ (subject to certain exceptions). A member will usually exercise this right where, for example:

- there is a deadlock in the management of the company;
- where the objectives of the company can no longer be achieved;
- where the company has illegal objects;
- where the company is being used as an instrument of fraud;
- where the company has a small number of members who no longer wish to conduct business with each other.

2.4.11 Right to Petition for Relief in Cases of Oppression²²

A member cannot bring proceedings to overturn a decision of the company where that decision could be ratified by a majority of its members. However, a member of a company can petition the High Court for relief where they consider that the affairs of the company are being conducted, or the powers of the directors are being exercised, in a manner oppressive to that member or to any of the members or is in disregard of their interests as members.

Oppressive conduct is the exercise of the company's authority in a manner which is burdensome, harsh and wrong. The types of conduct which might give rise to such an application include fraudulent and unlawful transactions, oppressive management and exclusion of the member from the management of the company.

In order to bring oppressive conduct to an end, the Court has wide discretion as to the remedies it can order, including:

- the purchase of the petitioner's or respondent's shares;
- the purchase by the company itself of the shares;
- the cancellation or variation of transactions or the alteration of constitutional documents.

²¹ Section 213 Companies Act, 1963, as amended.

²² Section 205 Companies Act, 1963.

3.0 Penalties Under the Companies Acts

3.1 Penalties for Criminal Offences

Court Imposed Penalties

Under the Companies Acts, provision is made for two types of criminal offence, namely summary and indictable offences. A summary offence is generally of a less serious nature and is tried before a judge only in the District Court. Indictable offences are generally of a more serious nature. Indictable offences can, in the same way as summary offences, be tried in the District Court before a judge only. However, the distinction between a summary offence and an indictable offence is that, due to their more serious nature, indictable offences can also be tried in the Circuit Court i.e. before a judge and jury.

Where this course is taken, the indictable offence is said to be prosecuted on indictment. Where an offence is prosecuted on indictment, the penalties provided for by the law on conviction are generally considerably higher than had the offence been prosecuted summarily.

In general the maximum penalty on conviction:

- of a summary offence under the Companies Acts is €1,904 and/or 12 months imprisonment, and;
- of an indictable offence under the Companies Acts is €12,697 and/or 5 years imprisonment.

However, the Companies Acts also provide for considerably higher sanctions in respect of certain offences e.g. fraudulent trading (€63,487 and/or 7 years imprisonment on conviction on indictment) and market abuse (€10 million and/or 10 years imprisonment on conviction on indictment).

3.2 Civil Penalties

Disqualification

In addition to fines and penalties, there are also provisions for other sanctions under the Acts. Persons convicted on indictment of an indictable offence relating to a company or involving fraud or dishonesty are automatically disqualified from acting as company directors/officers (see Appendix B to Information Book 2 – Company Directors).

The Director of Corporate Enforcement can also apply to the Courts seeking the disqualification of any person:

- guilty of two or more offences of failing to maintain proper books of account, or;
- guilty of three or more defaults under the Companies Acts.

Restriction

The provisions relating to the restriction of company directors apply to insolvent companies i.e. companies that are unable to pay their debts as they fall due. Where a company which goes into liquidation or receivership²³ is insolvent, a director of the company who fails to satisfy the High Court that he or she has acted honestly and responsibly will be restricted for a period of up to five years.

Such a restriction prevents a person from being a director or secretary or being involved in the formation or promotion of any company unless it is adequately capitalised.

23 A liquidator's function is to collect and realise the assets of the company, to discharge the company's debts, to distribute any remaining surplus, investigate the company's affairs and to legally dissolve the company. The function of a receiver is to dispose of certain assets of the company in order to allow the repayment of a debt to a creditor e.g. a bank. See Information Book 7 for further information on liquidators and receivers.

In the case of a private company, the capital requirement is €63,487 in allotted paid up share capital, and in the case of a public company, €317,435.

Such a company is also subject to stricter rules in relation to capital maintenance. The topic of restriction is dealt with in detail in Appendix B to Information Book 2 – Company Directors.

Strike Off

Where a company defaults in performing certain of its legal obligations e.g. fails to file an annual return with the Registrar of Companies, the Registrar can strike the company off the register of companies.

If struck off the register, ownership of a company's assets automatically transfers to the State. Ownership will remain with the State until such time as the company is restored to the register. While struck off, the liability of every director, officer and member of the company continues and may be enforced as though the company had not been dissolved²⁴.

The procedures required to have a company reinstated to the register are dealt with in Appendix A to Information Book 1 – Companies.

²⁴ Section 12B(1) Companies (Amendment) Act, 1982.

4.0 Useful Addresses

Office of the Director of Corporate Enforcement

16 Parnell Square
Dublin 1
Tel: 01 858 5800
Web: www.odce.ie

Companies Registration Office

14 Parnell Square
Dublin 1
&
O'Brien Road
Carlow
Tel: 01 804 5200
Web: www.cro.ie

Department of Jobs, Enterprise, & Innovation

Kildare Street
Dublin 2
Tel: 01 631 2121
Web: www.djei.ie

Company Law Review Group

Earlsfort Centre
Hatch Street Lower
Dublin 2
Tel: 01 631 2763
Web: www.clrg.org

Basis

*Business Access to State
Information & Services*
Web: www.basis.ie

Irish Auditing & Accounting Supervisory Authority

Willow House
Millennium Park
Naas
Co. Kildare
Tel: 045 983600
Web: www.iaasa.ie

Appendix A

Classes of Shares

Introduction

The rights and duties of a member will depend on the articles of association of the company. Certain rights accrue only to members who are shareholders in a company. A member of a company limited by shares must be a shareholder in the company. Where a company has a share capital, it is presumed that all shares have equal rights but the company may in its memorandum or articles of association create a power to issue different classes of shares, including ordinary, preference and redeemable shares.

Ordinary Shares

Ordinary shares generally carry the right to a vote. Where a company is wound up they generally have a right to participate in any surplus funds (i.e. when all creditors have been discharged) beyond the fixed amount which they originally invested in their shares.

Where ordinary shares carry weighted or differing levels of voting power, but carry equal entitlements in respect of dividends and capital, they are normally divided into classes e.g. Ordinary Shares Class A, Ordinary Shares Class B etc.

Preference Shares

Preference shares carry preferential rights, most commonly as to dividend or capital. A share which is preferred as to dividend usually entitles the member to be paid his or her dividend in priority to the ordinary shareholders. Preference shareholders' entitlements to dividends are generally expressed as a right to a percentage per annum of the nominal amount of the share.

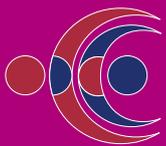
A share which is preferred as to capital entitles the member to have his or her capital investment in the company repaid in full before the ordinary shareholders are returned their capital in a winding up.

Redeemable Shares

Redeemable shares are shares which the company is entitled to redeem (i.e. buy back) from its members. Where shares are redeemed, the company generally cancels them. However, a treasury share is a share which is retained on redemption by the company and can subsequently be re-issued.

Bonus Shares

Bonus shares are shares issued to the shareholders in proportion to their existing shareholdings. They are issued as having been fully paid up i.e. the shareholders are not required to pay for them. They are usually paid from accumulated profits that have been transferred to capital i.e. capitalised.



Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach
Office of the Director
of Corporate Enforcement

For Further Information contact:

✉ **Office of the Director of Corporate Enforcement**

16 Parnell Square
Dublin 1
Ireland

☎ 01 858 5800
Lo-call 1890 315 015

☎ 01 858 5801

@ info@odce.ie

🌐 www.odce.ie

*Tá leagan Gaeilge den leabhrán seo ar fáil
An Irish version of this booklet is available*