

Company Law



Roles and Responsibilities of Company Directors

**Office of the Director
of Corporate Enforcement**





Company Law and Directors' Duties

- Company is a separate legal entity
 - Can sue and be sued in its own name
 - Holds assets and incurs liabilities separate from its members/shareholders
 - Confers limited liability on members/shareholders



Company Law and Directors' Duties

- Company is managed on behalf of members by Director/Board of Directors
- Duty under law to the company
- Board has collective responsibility for all actions (and omissions) by the company
- Company law focuses on directors as holders of power



Company Law and Directors' Duties

- Specific rules contained in Companies Act Parts 4 and 5 and Constitution
 - Composition of Board
 - Appointment/retirement
 - Quorum, etc.



Roles and responsibilities of boards

- Primary responsibilities set out in company law
- Additional duties set out in Constitution
 - These can be amended by members by special resolution
- Also general duties of loyalty and fidelity (which apply to all staff)



DIRECTORS DUTIES

COMMON LAW FIDUCIARY DUTIES

Section 228, Companies Act

- Act in good faith and in company's interest
- Act honestly and responsibly in conduct of company affairs
- Act in accordance with company's constitution



DIRECTORS DUTIES

COMMON LAW FIDUCIARY DUTIES


- Not use company property/information/opportunity for personal/third party gain without shareholder approval/constitutional support
- Not fetter judgement unless in company interests/shareholder approval
- Avoid conflicts of interest



DIRECTORS DUTIES

COMMON LAW FIDUCIARY DUTIES

- Act with due care, skill and diligence
- Have regard to interests of employees/members
- Have regard to particular interest of member with entitlement to appoint director



Breach of duties

- Not a criminal matter
- No ODCE involvement
- Actionable by the company in the High Court
- Expensive, time consuming
- Defence has right to seek discovery, can damage all sides



Shadow Directors

- Section 221 Companies Act
 - “a person in accordance with whose directions or instructions the directors of a company are accustomed to act”
 - “shall be treated...as a director of the company”
 - Other than advice given in a professional capacity



De Facto directors

- Section 222 Companies Act
 - Person carrying out the role of a director even if not validly appointed

Shadow Directors/De facto directors

- Companies Acts apply
- Company Law offences and sanctions apply
- However
 - Practical difficulty in using powers
 - Difficult to defend actions

Requirements under Statute

- ▶ In setting up a company you get
 - ▶ Limited liability
- ▶ In return you must provide
 - ▶ Disclosure
 - ▶ Accountability

Disclosure

- ▶ Three ways of disclosure
 - ▶ At the company's registered office
 - ▶ In the Companies Registration Office, www.cro.ie
 - ▶ In communications, correspondence, IT



Registered Office

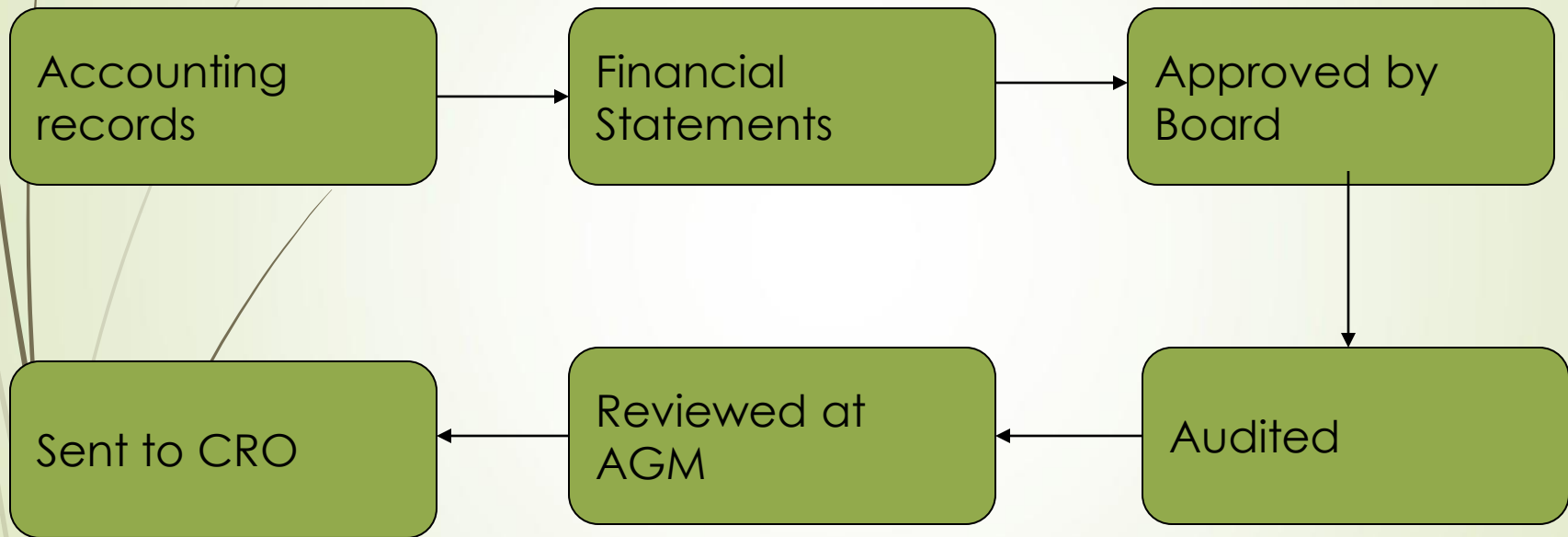
- “Brass plate” at the address
- Location of registers and minutes
- Publicly accessible
- Not served with any company notices,
Company dissolved?



Companies Registration Office


- Dublin
- Carlow
- Annual Return and Financial Statements
- Changes in directors, registered office, memo and articles etc.
- All publicly available, www.cro.ie

From records to Annual Return





Communications

- Letters
 - Emails/electronic correspondence
 - Website
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Accountability

- As well as disclosure requirements, the law also deals with
 - limits on the powers of directors
 - in particular with insolvency
- Prohibition on Loans (subject to SAP)
- Limits on substantial property transactions
- Potential accountability in insolvency
 - Mandatory Liquidator reports to ODCE
 - Restriction, disqualification, personal liability


More Common Breaches

- On the basis of information coming to ODCE attention, the following are some of the more common breaches:
 - transactions with directors - breaches of directors' loans provisions
 - 85 reports to ODCE
 - bankrupts as directors - 46 reports
 - auditing deficiencies - 35 reports
 - failure to keep proper books of account - 21 reports
 - failure to hold AGM/EGM - 17 reports
 - directors conduct - 17 reports
 - reckless/fraudulent/insolvent trading - 62 reports



What to do?

➤ **Advice to Directors**

- Ask questions
 - Don't assume anything
 - Books & Records - where are they
 - Discuss issues, don't avoid them
 - Seek professional advice
 - Consult your company secretary/auditors/legal advisors
 - Possibility of insurance
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- **Where is the registered office of the company?**
 - **Are your website and emails compliant?**
 - **Are you a properly appointed director?**
 - **What books and records do you have?**
 - **Who maintains your accounts, and where?**
 - **Have your books ever been audited?**

- **When was your last meeting of directors?**
- **When was your last AGM/EGM?**
- **What is your annual return date (ARD)?**
- **Are you taking advantage of your power as a director?**
- **Are you in financial trouble?**