
CHAPTER 11

Directors and other Officers

11.1 Introduction

- 11.1.1 In recent years, Irish company law and other legislation has seen a number of developments imposing and regulating liabilities of directors. The 1990 Amendment Act first imposed the concept of reckless trading in an examinership, which concept was extended to liquidations by the 1990 Act. The 1990 Act, which followed shortly after, introduced restriction of directors and extended the circumstances in which persons can be disqualified as directors, which procedures have been updated by Part 4 of the 2001 Act. The 1990 Act also extended the responsibilities of directors to include consideration of the interests of employees.¹ The Irish Takeover Panel Act 1997 introduced a statutory regime regulating the conduct of takeovers of public companies, which regime imposes specific responsibilities on the directors of public companies and of offeror companies.
- 11.1.2 A number of non-company law statutes, most notably the Safety, Health and Welfare at Work Act 1989 and the Environmental Protection Act 1992, express or have extended the liabilities of directors.²
- 11.1.3 The 2001 Act, in its substitution of s 383 of the 1963 Act, has expressly raised the standard of behaviour expected on the part of directors, as well as imposing an obligation on directors and the secretary to comply with the Companies Acts.³ In summary, therefore, the nature and extent of the duties and liabilities of directors have been updated by statute. The present non-statutory fiduciary duties of directors have remained, and are applied by the courts on an ongoing basis.

11.2 Approach of the Review Group

- 11.2.1 In the context of the recent evolution and development of directors' statutory duties, the Review Group considered whether the present non-statutory fiduciary duties of directors ought to be stated in statute law. This led to consideration of related issues of the duties of directors of joint venture companies as well as to the law affecting directors' and officers' insurance.
- 11.2.2 The Group also considered the related issue of whether the duties of the company secretary ought to be stated in statute law.
- 11.2.3 Finally, a number of issues were raised by submissions to the Review Group⁴ and by Group members, namely: (a) board structure, including the issue of one-director companies; (b) minimum and maximum ages of director; and (c) the disclosure of holdings of shares, options and other securities of directors and secretaries and of dealings in such securities.

11.3 Fiduciary duties of directors

- 11.3.1 An issue which has been considered from time to time by other company law review bodies has been whether directors' fiduciary duties ought to be expressed in a statute. It can of course be difficult and, in some cases, counter-productive to attempt to simplify the statement of complex legal obligations. The fiduciary duties of

1 Section 52 states: (1) The matters to which the directors of a company are to have regard in the performance of their functions shall include the interests of the company's employees in general, as well as the interests of its members. (2) Accordingly, the duty imposed by this section on the directors shall be owed by them to the company (and the company alone) and shall be enforceable in the same way as any other fiduciary duty owed to a company by its directors.

2 Section 48(19)(a) of the Safety Health and Welfare at Work Act 1989 states: Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

3 Section 383(3), as inserted by s 100 of the 2001 Act states: It is the duty of each director and secretary of a company to ensure that the requirements of the Companies Acts are complied with by the company.

4 The Review Group also considered certain issues relating to overseas disqualification orders and how they might affect the status of persons affected by them under Irish law. The Group made a brief submission to the Department on the Company Law Enforcement Bill, which is now reflected in the final text of the 2001 Act.

directors have been enunciated on a case by case basis⁵ rather than in a codified form. Following much discussion and analysis, the Review Group has come firmly to the view that inaccessibility and incomprehensibility of the law concerning the duties of directors can be remedied by their being stated in statute law. Such inaccessibility and incomprehensibility can in practice be a disincentive to compliance or a ready excuse to the indolent who have no wish to comply with such duties.

Jenkins Report 1962

- 11.3.2 The Jenkins Committee, which reported on the UK Companies Act 1948,⁶ recommended that the Act should provide that:

"a director of a company should observe the utmost good faith towards the company in any transaction with it or on its behalf and should act honestly in the exercise of his powers and the discharge of the duties of his office;

a director of a company should not make use of any money or other property of the company or of any information acquired by virtue of his position as a director or officer of the company to gain directly or indirectly an improper advantage for himself at the expense of the company;

a director who commits a breach of these provisions should be liable to the company for any profit made by him and for any damage suffered by the company as a result of the breach;

these provisions should be in addition to and not in derogation of any other enactment or rule of law relating to the duties or liabilities of directors of a company."⁷

Joint English and Scottish Law Commission Report 1999

- 11.3.3 More recently, in 1999, the joint report of the English Law Commission and the Scottish Law Commission⁸ has recommended that there should be a statutory statement of a director's main fiduciary duties and his duties of care and skill, signed by the director. The statement should be in broad language and should not be exhaustive.⁹ The duties to be stated are organised under the headings of

- (i) Loyalty
- (ii) Obedience
- (iii) No secret profits
- (iv) Independence
- (v) Conflict of interest
- (vi) Care, skill and diligence
- (vii) Interests of employees etc.
- (viii) Fairness

- 11.3.4 The law stating the duties of directors is not affected by the statement, which is intended to be non-exhaustive. By signing this document, a director acknowledges that he has read the statement, but not necessarily that he understands it.

5 See, for example, the leading cases of *Clark v. Workman* [1920] 1 IR 107 and *Re Regal Hastings v. Gulliver* [1942] 1 All ER 378.

6 And which inspired some variations of that Act in our own 1963 Act on other issues, e.g. providing for validation procedures for financial assistance.

7 Jenkins Report, p 34, para 99(a).

8 *Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties* (Joint Report – Scottish Law Commission, September 1999).

9 *ibid.*, p 43, para 4.48.

Modern Company Law For a Competitive Economy 2001

11.3.5 Most recently, the reports of the UK Company Law Review Steering Group culminating in the Final Report of June 2001,¹⁰ recommend an amendment to UK company law so as to express the fiduciary duties of directors, with a view to setting the "basic standards of directors' accountability... [and to provide] clarity about the rules governing decision making by directors." The duties are organised under the headings of:

- (i) Obeying the constitution and other lawful decisions
- (ii) Promotion of company's objectives
- (iii) Delegation and independence of judgement
- (iv) Care, skill and diligence
- (v) Transactions involving a conflict of interest
- (vi) Personal use of the company's property, information or opportunity
- (vii) Benefits from third parties
- (viii) Special duty where company more likely than not to be unable to meet debts
- (ix) Special duty where no reasonable prospect of avoiding insolvent liquidation.

The duties are stated in considerable detail – so much so that there are a number of notes to them to provide clarity – and the text runs to almost four pages of the report, as against a page or so in the 1999 Report.

Statutory statement of fiduciary duties

11.3.6 Starting on the assumption that directors' fiduciary duties ought to be stated in statute, the choices available are to go for a general statement of duties or to seek to expand them along the lines of the UK Report of 2001. In view of the novelty of the proposal, and with a view to keeping a light touch in the drafting of statements of what are fundamentally straightforward duties, the Review Group recommends that the fiduciary duties of a director to his company should be stated in general rather than specific terms, and on the basis that the statement of duties is not exhaustive. The Review Group is not convinced that the UK Company Law Review Steering Group's approach is the appropriate way to go and sees inherent conflicts concerning interpretation. Moreover, whereas this Group is primarily concerned with the consolidation of duties that have been well established in the Irish courts, the UK Company Law Review Steering Group is not content with this and seeks to impose additional duties and expand traditional duties to include matters that are currently in vogue. Such a prescriptive approach is susceptible to fossilisation and inappropriate application on particular facts and the Review Group prefers a more general statement which gives the judiciary interpretational latitude. Ultimately, in the consolidated Companies Act, the Review Group recommends that the statement of directors' fiduciary duties should introduce other provisions of the Companies Acts touching on directors' fiduciary responsibilities, such as the provisions at present found in ss 186 to 189 of the 1963 Act and Part III of the 1990 Act.¹¹ Those existing statutory provisions can be better put in context if their preamble is the statement of the underlying fiduciary duties.

11.3.7 The Review Group recommends a statutory statement of directors' fiduciary duties, being expressed along the following lines:

Context of directors' duties

Without prejudice to the provisions of any enactment (including this Act) directors shall owe the following duties to companies of which they are directors, and which shall be enforced in the same way as any other fiduciary duty owed to a company by its directors.¹²

¹⁰ Modern Company Law For a Competitive Economy, (Company Law Review Steering Group June 2001).

¹¹ This would, in particular, underpin directors' obligations to disclose contracts in which they have an interest as required by s 194 of the 1963 Act.

¹² See s 52(2) of the 1990 Act.

Duty of loyalty

A director must act in good faith in what he considers to be the interests of the company.¹³

Duty of obedience to company constitution

A director must act in accordance with the company's memorandum and articles of association and must exercise his powers only for the purposes allowed by law.¹⁴

Duty of avoidance of secret profits

A director must not use the company's property, information or opportunities for his own or anyone else's benefit unless he is allowed to by the company's memorandum or articles of association or the use has been disclosed to the members and an ordinary resolution passed consenting to it.¹⁵

Duty of independence of judgment

A director must not agree to restrict his power to exercise an independent judgment.¹⁶ However, if he considers in good faith that it is in the interests of the company for a transaction to be entered into and carried into effect, he may restrict his power to exercise an independent judgment in the future by agreeing to act in a particular way to achieve this.¹⁷

Duty to avoid conflicts of interest

If there is a conflict between an interest or duty of a director and an interest of the company in any transaction, he must account to the company for any benefit he receives from the transaction. This applies whether or not the company sets aside the transaction.¹⁸

However, a director need not account for the benefit if he is allowed to have the interest or duty by the company's memorandum and articles of association or the interest or duty has been disclosed to the members and approved by ordinary resolution.

Duties of care, skill and diligence

A director owes the company a duty to exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both (i) the knowledge and experience that may reasonably be expected of a person in the same position as the director, and (ii) the knowledge and experience which the director has.¹⁹

Duty to consider interests of third parties

A director must have regard to the interests of the company's employees in general and [to those of] its members,²⁰ and where the company is insolvent, its creditors.²¹

13 *Clark v. Workman*, [1902] 1 IR 107; *Percival v. Wright* (1902) 2 Ch 421.

14 *Punt v. Symons & Co* [1903] 2 Ch 506; *Piercy v. S Mills & Co* [1920] 1 Ch 77.

15 *Re Regal Hastings v. Gulliver* [1942] 1 All ER 378.

16 *Clark v. Workman*, [1902] 1 IR 107.

17 This principle has been accepted in a number of other common law jurisdictions in cases such as: *Fulham Football Club Ltd et al v. Cabra Estates PLC* [1994] 1 BCLC 363 (England and Wales); and in *Thorby v. Goldberg* [1965] 112 CLR 597 (Australia).

18 *Gabbett v. Lawder* (1883) 11 LR Ir 295.

19 *Re City Equitable Fire Insurance Limited* [1925] Ch 407.

20 This is a restatement of s 52(1) of the 1990 Act.

21 *Re Frederick Inns Limited* [1991] ILRM 582; [1994] 1 ILRM 387. This statement is without prejudice to the provisions of any other enactment, including those provisions of the Companies Acts imposing special obligations and penalties on directors in the event of insolvency. It should be noted that as with all duties enumerated in the statement, this duty is only enforceable against directors by the company (most likely acting through its liquidator). It is not enforceable at the instance of creditors.

A director appointed or nominated for appointment by a member with an entitlement so to appoint or nominate under the articles of association or a shareholders' agreement may have regard to the interests of that member.²²

Duty of fairness

A director must act fairly as between different members.²³

Directors' acknowledgement

- 11.3.8 The Review Group considered the benefit or otherwise from having a director acknowledge his duties upon appointment or notification of appointment. For example, if a newly-appointed director were to confirmed having read the fiduciary duties as stated in the statute it might appear to be of some advantage. However desirable that directors should be familiar with their duties, in the absence of a means of establishing actual familiarity (which is tantamount to having qualifications for directors), the Review Group does not accept that it is desirable to create a statutory fiction. Accordingly, the Group is of the view that a simple acknowledgement of the *existence* of directors' duties is preferable. The Review Group therefore recommends that upon notification of appointment as a director (on Form B10 or Form A1) and, in due course, on registration as a director,²⁴ a director's signature should appear below the statement: "I acknowledge that, as a director, I have legal duties and obligations imposed by the Companies Acts, other enactments and at common law".

11.4 Nominee directors

- 11.4.1 Frequently directors are nominated to the board of companies as a representative of one of the shareholders. Irish law is silent on nominee directors' duties. The fiduciary obligations of directors of joint venture companies make no exception for primary duties of those directors to the joint venturer which will have nominated them to the board of the joint venture company. The reality of the directors' position in this environment can pose real difficulties for nominees who may find themselves caught in a dilemma as to whom they owe their duties.²⁵
- 11.4.2 Louis Brandeis, who was later to become a United States Supreme Court Justice provides a robust advocacy of the obligation which affects directors of joint venture companies (where the joint venturers might be companies with financial interests in the same field of activity as the joint venture itself):

"The practice of interlocking directorates is the root of many evils. It offends laws human and divine. Applied to rival corporations, it tends to the suppression of competition Applied to corporations which deal with each other, it tends to disloyalty and to violation of the fundamental law that no man can serve two masters. In either event, it tends to inefficiency; for it removes incentive and destroys soundness of judgement."²⁶

- 11.4.3 In some Australian decisions²⁷ this strict rule has mellowed to permit (in the particular circumstances of that case) a nominee director to have regard to the interests of his appointor provided that in so doing the nominee director has an honest and reasonable belief that he is also acting in the best interests of the company.
- 11.4.4 The Review Group considers that the continued strict application of such a principle disregards the many situations where no adverse consequences to third parties arise, e.g. where the joint venture is a centre of profit in its own right, with the joint venturers having an investor's financial interest and ancillary trading relationships

22 This paragraph is proposed further to the recommendation at 11.4.6.

23 *Nash v. Lancegaye (Ireland) Ltd* (1958) 92 ILTR 11.

24 See Chapter 7.

25 Lower, "Good Faith and the Partly-Owned Subsidiary", [2000] *Journal of Business Law*; Christie, "The Director's Fiduciary Duty not to Compete" [1992] *Modern Law Review*. 506; Young, "Corporate Groups: Legal Aspects of the Management Dilemma", [1997] *Lloyd's Maritime & Commercial Law Quarterly* 208; Boors, "The Duties of Nominee and Multiple Directors", 11 *Co Lawyer* 6 and 211; Lower, "Do we need a Joint Venture Act?", (1995) *Palmer's In Company*.

26 'Breaking the Money Trusts' *Harpers Weekly* 6 December 1913, cited in Lower, *Journal of Business Law*., above, n. 25.

27 See *In Re Broadcasting Station 2 GB Ltd* [1964-65] NSW 1662.

appropriate to their competences. In the New Zealand case of *Berli Hesdtia (NZ) v. Fernyhough*²⁸ Mahon J commented that:

"As a matter of legal theory as opposed to judicial precedent, it seems not unreasonable for all the corporators to be able to agree upon an adjusted form of fiduciary liability, limited to circumstances where the rights of third parties vis-a-vis the company will not be prejudiced."

11.4.5 At present, the law is not altogether clear as to whether a company can contract out of its legal entitlement to compel performance by directors of their fiduciary duties.²⁹ It appears to the Review Group that no purpose is served by preserving this lack of clarity where the interests of third parties are not affected. In the absence of any release of a director from his fiduciary duty, the director must prefer the interests of the joint venture company rather than those of his appointor. One author concludes that "in the area of nominee directors the law is trailing a long way behind inoffensive commercial reality."³⁰

11.4.6 The Review Group recommends that where a director is appointed by reason of an entitlement of a shareholder so to appoint the director under the articles or by a shareholders' agreement, the director's fiduciary duties to the company are varied to the extent that they may have duties to third parties' interests, e.g. in the case of a nominee director, their appointors. The Group recommends that this clarification of the law is best effected by insertion of an appropriate paragraph in the statement of directors duties set out in this Report at 11.3.7.

11.5 Non-executive directors

11.5.1 The Review Group considered whether there are any grounds to vary the legal position of non-executive directors such that their duties as directors might be recognised in law as being different from those of executive directors. The Group could see no valid argument to vary the law by reference only to the position of a director as a non-executive.

11.5.2 The proposed new provisions as to a statutory statement of directors' duties recognise that each director brings his particular abilities to the board table and, to that extent only, there would be validly expected differences in competence expected. However, the Group sees no particular justification in separating out non-executive directors as such.

11.6 Directors' and officers' insurance

11.6.1 At present there is an active market in the provision of directors' and officers' insurance, as well as a frequent practice of directors of Irish subsidiaries of overseas companies receiving indemnities from those overseas companies. This practice exists notwithstanding s 200 of the 1963 Act, which reads as follows:

Avoidance of provisions exempting officers and auditors of company from liability.

200.—Subject as hereinafter provided, any provision whether contained in the articles of a company or in any contract with a company or otherwise for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void, so, however, that—

- (a) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and
- (b) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 391 in which relief is granted to him by the court.

28 [1980] 2 NZLR 150.

29 *Russell v. Northern Bank Development Corporation Ltd* [1992] 1 WLR 588; *Clark Boyce v. Mouat* (1993) 4 All ER 268 and *Kelly v. Cooper* [1993] AC 205.

30 "Nominee Directors: The Law and Commercial Reality," *The Company Lawyer*, Vol 12, No 7, 136 at 142.

- 11.6.2 There is a general practice among insurers who underwrite directors' and officers' insurance for the contract of insurance to contain a clause along the lines of "the insurer will not invoke section 200 of the Irish Companies Act 1963 to invalidate this policy of insurance". The flaw in this practice is that it is not for an insurer, or any person for that matter, to decide whether or not a contract is void under the section – the section states "void", not "voidable" – if a contract such as a contract of insurance falls under the section, then it will be void, and there is nothing an insurer or the intended insured can do.
- 11.6.3 Market practice appears to be to write the policy under the laws of a jurisdiction other than Ireland, usually that of England and Wales. This would appear to offer a better possibility of the insurance overcoming s 200 in order to be enforceable against the insurer, but does not address the breach of duty by the directors in contravening the section: the underlying philosophy of the section being that the company ought not spend its money in bailing out negligent directors and other officers.
- 11.6.4 In the UK, this issue was addressed by an amendment to their comparable legislation,³¹ which enables companies to take out directors' and officers' insurance. As the insurance is in practice for the benefit of a wronged third party (whilst of course providing an indemnity to the director or other officer) the Review Group recommends that s 200 of the 1963 Act ought to be amended to provide:
- (i) that a company can take out and fund directors' and officers' insurance;
 - (ii) that such policies of insurance cannot be avoided by reason of the other provision of s 200; and
 - (iii) all existing policies of insurance where the parties have agreed not to invoke s 200 should be recognised as being and always to have been unaffected by s 200.

11.7 Duties of the company secretary

- 11.7.1 The responsibilities of company secretaries are stated only obliquely in statute law, and arguably with even less clarity than those of directors. Historically, the secretary has been expected to be the principal administrative officer of the company insofar as administration concerns compliance with the requirements to maintain registers and the requirements to file documents with the Registrar under the Companies Acts.
- 11.7.2 The Institute of Chartered Secretaries' Handbook states:
- "Every board and its directors should have recourse to the advice and support of a named, Irish-resident company secretary, suitably qualified to provide the necessary advice and guidance to the directors individually and collectively, as to their obligations and responsibilities under company law and regulation, the company's constitution and prevailing corporate governance guidelines.
- The secretary has a general duty to make enquiries as to whether the company is complying with its company law and corporate governance obligations and to advise the board accordingly.
- To preserve his independence the appointment, remuneration and any question of the removal of the company secretary should be a matter for the board as a whole."
- 11.7.3 In all well-run companies, the importance of a company secretary is recognised. Some companies describe the function as "chief administrative officer" or "chief legal and administrative officer." The function has certainly advanced, as was recognised by Lord Denning in *Panorama Development Guilford Ltd v. Fidelis Furnishing Fabrics Ltd*³² who stated that "the company secretary is a much more important person nowadays", from the suggestion that the secretary is a "mere servant" as so described in a leading case, in 1887, *Barnett, Hoares and Co v. South London Tramways Co*.³³

31 See s 137 of the UK Companies Act 1989, substituting s 310 of the UK Companies Act 1985, which provides that the prohibition on indemnities, etc. "does not prevent a company from purchasing and maintaining for any such officer or auditor insurance against any such liability".

32 [1971] 2 QB 711.

33 [1887] 18 QBD 815.

11.7.4 The importance of the role of the secretary has been recognised by reviews of corporate governance, including the UK Cadbury Code,³⁴ which states at para 1.6:

"All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Any question of the removal of the secretary should be a matter for the board as a whole."

Cadbury states at para 4.25 that "the company secretary has a key role to play" and "the chairman and the board will look to the secretary for guidance on what their responsibilities are under the rules."

11.7.5 Irish company law provides that:

- (i) Every company shall appoint a secretary.³⁵
- (ii) The secretary shall be an officer of the company.³⁶
- (iii) It is the duty of each director and secretary of a company to ensure that the requirements of the Companies Acts are complied with by the company.³⁷
- (iv) A certain level of skill and expertise is required by those who fill the office of secretary of a public limited company. Section 236 of the 1990 Act provides:

It shall be the duty of the directors of a public limited company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and whom

- (a) on the commencement of this section held the office of secretary of the company; or
- (b) for at least three years of the five years immediately preceding his appointment as secretary held the office of secretary of a company; or
- (c) is a member of a body for the time being recognised for the purposes of this section by the Minister; or
- (d) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging those functions.

11.7.6 Until the insertion of the new s 383 of the 1963 Act by s 100 of the 2001 Act, there was no statement of what the secretary's duties might be. Nowhere in the Companies Acts does it suggest how a secretary will "ensure that the requirements of the Companies Acts are complied with" by a company. The function of the secretary, like that of the directors, will vary from company to company. In a quoted plc, the person will most probably be professionally qualified and have functions beyond the routine convening and recording of the proceedings of meetings and making of filings to the CRO.

11.7.7 In the same way as the Review Group proposes that the fiduciary duties of directors be stated in law, the Group is of the view that there should be recognition for the expected role of the secretary as the person who – by order of the board – convenes meetings, records their proceedings, is custodian of the registers required under the Companies Acts and the person to whom the directors are permitted or expected to delegate their responsibility to make filings under the Companies Acts.

11.7.8 There are in effect two suggested alternatives in order to implement such a proposal, the South African example set out in section 268 of their Companies Amendment Act 1999, on the one hand, and, on the other, a more minimalist approach. The South African law provides:

"A secretary's duties include but are not restricted to

- (a) providing the directors of the company collectively and individually with guidance as to their responsibilities and powers,

34 *Report of the Committee on the Financial Aspects of Corporate Governance* (Cadbury Committee Report) and *Code of Best Practice*. 1 December 1992.

35 1963 Act, s 175. This applies to single member private limited companies also.

36 1963 Act, s 2.

37 1963 Act, s 383, as inserted by s 100 of the 2001 Act.

- (b) making the directors aware of all law and legislation relevant to or affecting the company and reporting at any meeting of the shareholders of the company or of the company directors any failure to comply with such law or legislation,
- (c) ensuring that minutes of all shareholders' meetings, directors' meetings and meetings of any committee of directors are properly recorded,
- (d) certifying in the annual financial statements of the company that the company has lodged with the Registrar all such returns as are required by the Act and that all such returns are true, correct and up to date, and
- (e) ensuring that a copy of the company's annual financial statements is sent to every person who is entitled thereto in accordance with the Act."

This statement is quite legalistic and, more importantly, out of step with the reality in Ireland. To move to such an exacting level of duties would constitute a substantial change in the law.

11.7.9 The more minimalist approach would be broadly declaratory of the present position. For example in his book *Company Law In The Republic Of Ireland*, Ronan Keane states that the functions of the secretary, shall include, but shall not be limited to the following:

- "(a) keeping charge of the register of members, register of directors and secretaries register of debentures and register of directors shareholdings;
- (b) making the annual return to the Registrar;
- (c) keeping the minutes of general meetings and of meetings of the board of directors;
- (d) notifying the Registrar of any alterations in the memorandum and articles;
- (e) giving notice to members of meetings;
- (f) furnishing the Registrar with particulars of charges entered into by the company."³⁸

11.7.10 If there is to be a statement of the responsibilities of the company secretary, such statement must: (a) be realistic; (b) reflect properly that it is the directors who are primarily responsible for the management and direction of the company, and to that extent primarily responsible for compliance with the Companies Acts; and (c) reflect the fact that the secretary is appointed by and can be removed by the directors.

11.7.11 The Review Group therefore recommends that the Companies Acts provide that:

- (i) The duties of the secretary of the company will, without derogating from his own responsibility, be such duties as are delegated by the board of directors acting as a whole.
- (ii) The directors will in their appointment of a secretary (who may be one of their number)³⁹ have a duty to ensure that the person appointed as secretary has the suitable skills to maintain (or to procure the maintenance of) the records (other than accounting records) required to be kept under the Companies Acts.
- (iii) Upon notification of appointment as a director (on Form B10 or Form A1) the secretary's signature should appear below a statement: "I acknowledge that, as a secretary, I have legal duties and obligations under the Companies Acts and other enactments."⁴⁰

11.8 Board structure

11.8.1 The Group examined a number of issues concerning the make-up of the board of directors. The sum total of the statute law concerning the make-up of the board of directors is s 174 of the 1963 Act, which says:

174.—Every company shall have at least two directors.

11.8.2 The 1999 (No 2) Act introduced a considerable amount of reform with a view to dealing with the Irish registered

38 Keane, p 379, para 28.02.

39 Save in the case of a single director company. See 11.8.4 – 11.8.7.

40 Following the precedent for company directors.

non-resident company issue, with a requirement now for (i) an Irish-resident director or (ii) certified real and continuous link to Ireland or (iii) bond for £20,000 (€25,394.76) in favour of the Registrar and/or the Revenue Commissioners, and a limit, subject to exceptions, of 25 on the number of directorships which can be held by an individual.

- 11.8.3 Beyond these reforms, there are a number of aspects of the law which have been left unexamined, unreformed or unstated. The Group looked at a number of interrelated issues – ought it be possible for there to be single director companies? If so did it make sense for a company to have a company secretary? Ought there be the possibility of corporate directors?

Single director companies

- 11.8.4 The legal background to the idea of there being single director companies is found in the 12th Directive on "one person private limited companies."⁴¹ This Directive has been implemented in Ireland by means of the European Communities (Single Member Private Limited Companies) Regulations 1994⁴² which deals with the question of membership only rather than with the number of directors. It is understood that the text of the Directive, which is non-mandatory with respect to the number of company directors, reflects a lack of consensus on this issue among the Member States as to whether single director companies should be permitted. That said, the third recital of the Directive refers to the "small and medium-sized enterprise action programme" having been approved by the Council of Ministers. The fifth recital reads:

"whereas it is important to provide a legal instrument allowing the limitation of liability of the individual entrepreneur throughout the Community, without prejudice to the laws of the Member States which, in exceptional circumstances, require that entrepreneur to be liable for the obligations of his undertaking [emphasis added]."

- 11.8.5 Therefore, whilst allowing for single member companies, Irish law has preserved the requirement for two directors. This has had the perverse consequence (by anecdotal evidence of the members of the Review Group) of this form of corporate entity being used predominantly other than by entrepreneurs, and instead being used by Irish subsidiaries of multinational groups.
- 11.8.6 Incorporation and limited liability are of course privileges conferred by the law and it is proper that in certain circumstances – most notably in the case of quoted companies – that there should be a requirement for more than one director. This aims to ensure that there will always be at least two senior individuals involved in the management of a company so that abuse of limited liability can to some extent be limited.
- 11.8.7 Most entrepreneurs will seek a second person, usually a family member, to be a director, even though that family member may have little or no involvement with the business for whose direction they are collectively responsible. This appears to the Review Group to serve only to devalue and trivialise the office of director of a company – far better that a director's liabilities be properly understood and complied with by a "real" director rather than being foisted on a non-participator in the business. There appears to be an irrefutable argument that the philosophy underpinning the 12th Directive has to a notable extent not been adequately implemented by the failure to enact the law in such a way as to facilitate single entrepreneurs. However, this is, as stated above, attributable in part to the lack of consensus on this issue at European level in the first place. An example of how to deal with this issue is how it has been dealt with in the UK where the law provides for private companies to have one director, provided that the company secretary is a different person.

Position of the company secretary

- 11.8.8 The UK Company Law Review Group Steering Group has complicated the present proviso in UK law by suggesting that the position of company secretary ought to be optional, not obligatory, for all private companies.⁴³ Only public companies would, if this proposal was implemented, be required to have a company secretary.

41 89/667/EEC of 21 December 1989.

42 SI No 275 of 1994.

11.8.9 The Review Group noted, however, that issues of corporate governance and compliance are becoming increasingly complex and important. In the light of historically high (although now reducing) levels of failure to comply with rudimentary filing obligations on the part of companies, it would appear to be a step backward to remove the officer generally expected to be the one to attend to, or at least to be competent to attend to, such obligations. The Review Group recommends that the office of company secretary be retained.

Corporate directors

11.8.10 Before formulating its recommendation with respect to the overall issue of whether there ought to be single-director companies, the Review Group considered whether there ought to be a possibility for there to be corporate directors. The Group believes that such a possibility would be neither popular nor would it assist in the drive for directors to be personally accountable for their actions and, hence, recommends that the existing prohibition be retained.

Conclusions

11.8.11 The Review Group considers that it ought to be possible for private companies limited by shares (i.e. the new model company envisaged by the Group) to have one director only, and recommends accordingly. As in the UK, the Group sees an advantage to following the present rule in the UK of requiring that there be a separate company secretary. The Review Group believes that the current minimum requirement of two directors should remain for all other companies on the grounds that wider accountability is desirable in the case of PLCs, guarantee companies (many of which will be charities, interest groups or management companies) and unlimited companies. The Group's recommendations may be summarised thus:

Type of company	Minimum number of directors?	Must there be a company secretary?	If a sole director, can he also be the secretary?
Private company limited by shares (i.e. the CLS)	1	Yes	No
All other companies	2	Yes	Not applicable

A maximum number of directors?

11.8.12 The Group is of the view that there is no movement to change the law in this area and therefore makes no recommendation on the subject.

A management board and a supervisory board

11.8.13 The Review Group considered whether Irish law might provide for a distinction between a management board and a supervisory board, as envisaged by the draft Fifth Company Law Directive. The Group observed that there was little domestic pressure to change the board structure of companies along the lines originally envisaged by the draft Fifth Directive. Where individual companies required various tiers – e.g. the requirement for audit committees or remuneration committees – individual companies could and did insert such tiers.⁴⁴ Furthermore, it was felt that this issue is one which is being developed in the context of the European Company Statute,⁴⁵ and the Group would defer consideration of it until any further move on the subject is made in Europe.

An entrenched right of employees to elect a director?

11.8.14 The Review Group considered whether there is any desirability for an initiative in this area and came to the conclusion that this is best kept as a voluntary matter. Irish law does exist to deal with the issue in State sponsored companies.⁴⁶ Employee involvement in the workings of large companies has been enhanced by

43 Modern Company Law for a Competitive Economy (Final Report June 2001), para 4.6.

44 See, for example, recommendation 13.1 of the RGA's report.

European Works Councils.⁴⁷ In addition, the successive agreements between the social partners have advanced employer-employee consultation structures.⁴⁸ The adoption of an agreed amended proposal for a Council Directive "establishing a general framework for improving information and consultation rights of employees in the European Community"⁴⁹ which will have the effect of introducing statutory works councils to Ireland, ultimately to all companies with 50 or more employees, to a great degree has dealt with the requirement for employer / employee interface. Most recently, the Directive supplementing the Statute for a European Company with regard to the involvement of employees has been agreed.⁵⁰ The Review Group therefore makes no recommendation to provide for such an entrenched right at this time.

11.9 Minimum and maximum ages for directors

11.9.1 The Registrar informed the Review Group that the CRO had identified a number of companies where the age of the directors fell below 18 years. In a small number of companies, the age of the directors was under 6 years. A number of submissions suggested that a minimum age be stipulated at age 18.

11.9.2 Ireland is not alone in failing to stipulate a minimum age for directors or other officers. Most European countries, including the UK, do not have a minimum age. A number of countries have specified a minimum age, usually 18, such as Australia, Canada, Denmark, Malaysia and Sweden. The majority of countries do not specify a minimum age for company officers. However, those that do usually specify the age of majority. In view of the serious responsibilities and potential liabilities of company directors, the Group considered seeking to fix an age as a minimum age.

11.9.3 For the purpose of considering what ought be the minimum age, relevant ages under other codes of law were examined by the Group.

Criminal law

11.9.4 *Seven years and under:* there is an irrebuttable presumption that a child of seven or younger is incapable of knowing right from wrong (*doli incapax*).

Over seven and under 14 years: there is a presumption that a child of this age has not reached the age of discretion, which may be rebutted by proof that the child was able to distinguish between right and wrong and that he knew what he was doing was morally wrong. It is a question of the individual child's level of understanding and judgment.

14 years and over: any incapacity of children to commit crime ceases on reaching the age of 14, which is the age of full criminal responsibility. A child of 14 or older is presumed to be capable of distinguishing right from wrong and is subject to the same rule as adults.

Contract law

11.9.5 Under the Age of Majority Act 1985, an individual attains the age of majority at 18 years or upon marriage, if earlier. Contracts made by a minor are either void or voidable, the exceptions to this rule being contracts for necessities or beneficial contracts of service, which are valid. The purpose of this law is to protect minors. The contracts which will be void are contracts of loan, contracts for goods (other than necessities) and accounts stated.

11.9.6 Under the law of agency, all persons of sound mind, including minors and other persons with limited or no capacity to contract on their own behalf, are competent to act or contract as agents. A minor director will

45 See Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE).

46 Worker Participation (State Enterprises) Acts 1977 and 1988.

47 Transnational Information and Consultation of Employees Act 1996.

48 e.g. Partnership 2000, Programme for Prosperity and Fairness.

49 COM(2001) 296 final, 1998/0315 (COD).

50 Council Directive 2001/86/EC of 8 October 2001.

therefore be able to bind a company to a transaction, provided that he has sufficient understanding to consent to the agency and to do the act required, in circumstances where the contract could not be enforced against him personally if he had entered into same on his own behalf.

Wills

- 11.9.7 Section 77 of the Succession Act 1965 provides that a will must be made by a person who has attained the age of 18 years or is or has been married and is of sound disposing mind.

Land law

- 11.9.8 If a minor holds land, even freehold land, it is deemed to be settled land, within the meaning of the Settled Land Acts. In the Land Registry, the minor's name appears as the registered owner, but he is described as "infant", so that third parties will be aware that the powers under the Settled Land Acts 1882 and 1890 may be exercised on the minor's behalf by the trustees of the settlement.

Employment law

- 11.9.9 The Protection of Young Persons (Employment) Act 1996 prohibits the employment of children, who are defined for the purposes of the Act as persons under the age of 16 or the school leaving age, whichever is the higher. The Minister of State at the Department of Enterprise, Trade and Employment may licence individual children, and make regulations in respect of children over 13 years, in cultural, artistic, sports and advertising activities which are not harmful to safety, health or normal development and are not likely to interfere with attendance at school. It is necessary to obtain the written permission of the parent or guardian when employing a child.

Law of torts

- 11.9.10 While proceedings in respect of a civil wrong may be maintained in respect of a cause of action accruing to a minor, it is a procedural requirement that a minor must sue by his "next friend". On attaining the age of 18, if the proceedings are still ongoing, the title must be amended to reflect the fact that the plaintiff is suing in his own right. Minors over the age of seven are generally liable in tort, as for instance for defamation, trespass or conversion, but a minor is not answerable for a tort directly connected with any contract upon which no action will lie against him.

Capacity to vote

- 11.9.11 An individual is entitled to vote on attaining the age of 18 years.

Minimum age for company directors

- 11.9.12 The Review Group gave serious consideration to setting the minimum age of directors at the age of 16. Examples of entrepreneurial flair at that age were cited. If the minimum age for directors were to be set at the age of 16, one would be facilitating employment, but not quasi self-employment, as a proprietary director, at the age of 16. If a minimum age of 18 were set, it would potentially affect teenagers who for example during their transition year might begin small businesses. However, it was felt that it was fundamentally anomalous to have a situation where the general law imposes restrictions on the contracting power of a minor until the age of 18, and this could be circumvented by the use of a company. Public policy, as expressed by the Age of Majority Act 1985 prevented minors from being capable of being contractually bound until the age of 18. If it were proposed that there be a lower age, logic would suggest that the principle of contractual capacity itself at 18, as opposed to 16, ought to be looked at, rather than just the entitlement to manage and direct a company. Finally, limited liability in particular was a legal privilege that the law ought not make available to minors. Being a director carries responsibilities and duties, and it is necessary that those who are accountable and answerable are of an age that will understand these duties.

11.9.13 The Review Group therefore recommends that:

- (i) No individual shall become a director or secretary of a company unless such individual has attained the age of 18 years.
- (ii) Any purported appointment of an individual before his having attained the age of 18 years shall be ineffective and void as between the company and the individual under 18. However, third parties would not be required to enquire as to the age of a director and the rules of ostensible authority of an individual to represent a company would apply.
- (iii) The implementing legislation should provide for an 18-month time period within which directors would be obliged to ensure that all directors are aged 18 years or more.

Maximum age for directors

11.9.14 The Group is of the view that there is no pressure to change the law to provide for a maximum age for directors. The only arena where views about the maximum age of directors have been discussed is in the case of quoted public companies, and in that event it was open to the companies themselves to provide in their articles of association for such a maximum, should they feel the need. Great Britain and Northern Ireland expressly provide in their legislation that directors of PLCs must vacate office at the annual general meeting following their 70th birthday, unless the articles of the company provide otherwise. The re-election of persons over 70 requires special notice (28 days) stating the age of the candidate for re-election.

11.9.15 In the UK's current review of company law⁵¹ the removal of the age limit and its replacement with a requirement to disclose the age of directors to shareholders prior to appointment or confirmation of appointment is recommended. The Review Group considered this suggestion, but concludes that this is essentially an issue of capacity, rather than of age. Accordingly, the Group makes no recommendation to change the law on this subject.

11.10 Disclosure of interests in shares, debentures and options

11.10.1 A number of submissions were received by the Review Group concerning the requirement under Part IV of the 1990 Act for directors and secretaries to notify the company of which they are director or secretary, as the case may be, of acquisitions and disposals of shares. In particular, it was submitted that the level of compliance was slight, and that the level of complexity in the law was disproportionate to the aim of the law in the vast majority of cases. It was argued that the UK had exemptions for what can loosely be called "remunerative" share and option entitlements and that Ireland ought to follow that precedent.

11.10.2 The background to the present law is found in s 190 of the 1963 Act. Under this section, companies were obliged to maintain a register of interests of directors and secretaries in company shares and debentures. The public policy underpinning the law is that persons having dealings with a company ought to be aware of the interest that the company's officers have in the company.

11.10.3 In view of the perception of non-compliance with this section, and with a view to encourage better record-keeping by companies, the 1990 Act for the most part put the primary disclosure obligation on the director, with the company having a consequential record-keeping obligation. This public policy imperative was emphasised in the 1990 Act with the introduction of a novel procedure (in that it was not, like the rest of Part IV of the 1990 Act, based on UK legislation) enabling persons with an interest to apply to court for disclosure of ownership of shares in private companies.

51 *Modern Company Law for a Competitive Economy: Developing the Framework*, p58, para 3.108 (Company Law Review Steering Group. Final Report p140, para 6.18.)

- 11.10.4 Under the 1990 Act a director (or shadow director) must, within five days after becoming aware that he or a person with a connection to him has acquired or disposed of an interest in shares or debentures, notify the company of that fact, along with specified information. This arises whether the shares or debentures are in the company of which he is a director, or a holding company or a subsidiary of such holding company. The purchase or sale price must be disclosed. Failure to notify means that rights attaching to the shares – e.g. the right to vote or to sell – are not enforceable save by leave of the High Court.⁵² Interests in existence before 1 August 1991, the operative date of the sections, were to have been notified by midnight on 14 August 1991. The level of compliance with this law appears to be low.
- 11.10.5 There are a number of anomalies:
- (i) A director's salary will be disclosed, in the aggregate, some months following the financial year's end. On the other hand, share options or the acquisition or disposal of shares go (or at least are meant to go) on the public record immediately.
 - (ii) The delivery of a stock transfer form is considered insufficient notification of an interest – the notification must state that it is being made for the purposes of s 53 of the 1990 Act.⁵³ Therefore a director and a company may honestly disclose the identity of the directors and their shareholdings in the register of directors and register of members respectively, but because of failure to make an otiose notification under this law, the rights attaching to the shares are unenforceable.
 - (iii) A notification cannot be made on the day of acquisition – it must be on the day after or during the four business days after that date.⁵⁴
 - (iv) An honest failure to notify an interest in shares is remediable only by applying to the High Court to restore enforceability of rights attaching to shares.⁵⁵
- 11.10.6 A number of submissions suggested that there should be an exemption for disclosure of interests where the director is a director of an Irish subsidiary company holding shares in the foreign holding company. The Review Group is of the view that to allow this would defeat one of the main aims of the legislation – to procure disclosure of the financial interest of company officers in companies (including through an interest in a holding company) and, accordingly, cannot recommend it. The possibilities of use of such an exemption to avoid disclosure of interests altogether would be immense.
- 11.10.7 The Group, however, is of the view that where a director has a quasi-remunerative interest only – e.g. share options or insignificant shareholdings, it appears overly bureaucratic to require that every movement in such interests should have to be notified. If the public policy imperative is to ensure that directors' and secretaries' interests are made known to the world, then there is an argument that, at low percentage levels, that alone is what should be disclosed, rather than fine detail.
- 11.10.8 The Review Group recommends that a number of amendments be made to the law, the effect of which will be to disapply the existing law from the vast majority of private companies limited by shares. The recommendations are:
- (i) The obligation of a director or secretary to make a notification under Part IV of the 1990 Act should be disapplied where the interest of a director or secretary falls short of 1% of issued share capital or debentures of the company in which the holding is (whether that company is the company itself, its holding company or a subsidiary of a holding company). In such event, a director or secretary ought to be required merely to disclose the fact of such an interest to the company of which he is a director, along the lines of a general disclosure as to interest in company contracts under s 194 of the 1963 Act. This

52 1990 Act, s 58(3).

53 1990 Act, s 53(8).

54 1990 Act, s 56(1).

55 1990 Act, s 58(3).

disapplication should apply whether the company is private or public. Law and regulation applicable to public companies quoted on various markets will operate to provide more detail.

- (ii) What is and is not an interest in shares should be defined in a clear and comprehensive fashion. Insofar as it is possible, there should be a common definition of an interest in shares for the purposes of this law and the law requiring the disclosure of substantial interests in voting capital of PLCs (so that, at the very least, the differences can be apparent to users of the law).⁵⁶
- (iii) Directors and secretaries should be exempted from notifying where an original or a copy of a stock transfer form is delivered to the company, which on its face identifies the director, secretary or a connected person as purchaser or seller of the shares and the purchase price, within a period of 30 days following the transfer.
- (iv) Notification of interests should be permitted on the day of acquisition or disposal also, as well as in the five days following.
- (v) For a period of eighteen months after enactment of the amending law, a company should be empowered by a combination of (a) an ordinary resolution of the members and (b) a board resolution, to reinstate the enforceability of rights attaching to shares of any director, without the need for the director or secretary to apply to court, where the director-shareholder or secretary-shareholder makes an affidavit for or representation to the company that the failure to make the notification was inadvertent, and where the board is satisfied with that explanation.
- (vi) Rights attaching to shares of directors and secretaries (and persons controlled and connected to them, etc.) should be enforceable where the information required in the register of interests in shares has appeared in a register or a combination of registers of the company from no later than 30 days following the director or secretary concerned acquiring the shares or debentures in question. So, for example, if the register of members identifies a holder of shares and the purchase price and the register of directors identifies the holder of the shares as a director, then the enforceability of rights on such director's shares would not be affected by the 1990 Act.



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11.11 Summary of Recommendations

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11.11 Summary of recommendations

- The fiduciary duties of a director to his company primarily as identified by the Irish courts should be stated in statute law. This statement should be in general rather than specific terms, derived from principles established by the courts and on the basis that the statement of duties is not exhaustive. Ultimately, in the consolidated Companies Act, the statement of the director's fiduciary duties should introduce other provisions of the Companies Acts touching on directors' fiduciary responsibilities, such as the provisions at present found in ss 186 to 189 of the 1963 Act and Part III of the 1990 Act. **(11.3.6/11.3.7)**
- Upon notification of appointment as a director (on the Form B10 or Form A1) and, in due course, on registration as a director, a would-be director's signature should appear below a statement: "I acknowledge that, as a director, I have legal duties and obligations imposed by the Companies Acts, other statutes and at common law" **(11.3.8)**
- Where a director is appointed by reason of an entitlement of a shareholder so to appoint the director under the articles or by a shareholders' agreement, the director's fiduciary duties to the company should be varied to the extent that they may have co-existing duties to third parties e.g. in the case of a nominee director, their appointors. This clarification of the law is best effected by insertion of an appropriate paragraph in the statement of directors' duties set out in this Report at 11.3.7. **(11.4.6)**
- No distinction should be made between the duties of executive and non-executive directors. **(11.5.2)**
- Section 200 of the 1963 Act ought to be amended to provide:
 - (i) that a company can take out and fund directors' and officers' insurance;
 - (ii) that such policies of insurance cannot be avoided by reason of the other provision of s 200; and
 - (iii) all existing policies of insurance where the parties have agreed not to invoke s 200 should be recognised as being and always to have been unaffected by s 200. **(11.6.4)**
- The Companies Acts should provide that:
 - (i) The duties of the secretary of the company will, without derogating from their own responsibility, be such duties as are delegated by the board of directors acting as a whole.
 - (ii) The directors will in their appointment of a secretary have a duty to ensure that the person appointed as secretary has the necessary skills to maintain (or to procure the maintenance of) the records (other than accounting records) required to be kept under the Companies Acts.
 - (iii) Upon notification of appointment as a director (on the Form B10 or Form A1) the secretary-designate's signature should appear below a statement stating "I acknowledge that, as a secretary, I have legal duties and obligations under the Companies Acts and other enactments". **(11.7.11)**
- The office of company secretary should be retained. **(11.8.9)**
- The existing prohibition on corporate directors should be retained. **(11.8.10)**
- It should be possible for a private company limited by shares (i.e. the proposed CLS) to have one director only with a requirement that there be a separate company secretary. Sole directors should not also be the company secretary. The existing requirement for two directors should remain for all other companies. **(11.8.11)**.

- No individual should be capable of becoming a director or secretary of a company unless such individual has attained the age of 18 years. **(11.9.13(i))**
- Any purported appointment of an individual before his or her having attained the age of 18 years should be ineffective and void as between the company and the individual under 18 years. However, third parties would not be required to enquire as to the age of a director and the rules of ostensible authority of an individual to represent a company would apply. **(11.9.13(ii))**
- The implementing legislation should provide for an 18 month time period within which directors would be obliged to ensure that all directors are aged 18 years or more. **(11.9.13(iii))**
- The obligation of a director or secretary to make a notification under Part IV of the 1990 Act should be disapplied where the interest of a director or secretary falls short of 1% of issued share capital or debentures of the company in which the holding is (whether that company is the company itself, its holding company or a subsidiary of a holding company). In such event, that director or secretary ought to be required merely to disclose the fact of such an interest to the company of which he is a director, along the lines of a general disclosure as to interest in company contracts under s 194 of the 1963 Act. This disapplication should apply whether the company is private or public. This is without prejudice to listing requirements. **(11.10.8 (i))**
- What is and is not an interest in shares should be defined more clearly, to the extent, if possible, of aligning the definition with that for disclosure of substantial interests in voting capital of PLCs (so that at least the differences can be more apparent to users of the law). **(11.10.8 (ii))**
- Directors and secretaries should be exempted from notifying where an original or a copy of a stock transfer form is delivered to the company, which on its face identifies the director, secretary or a connected person as purchaser or seller of the shares and the purchase price, within a period of 30 days following the transfer. **(11.10.8 (iii))**
- Notification of interests should be permitted on the day of acquisition or disposal also, as well as in the five days following. **(11.10.8 (iv))**
- For a period of eighteen months after enactment of the amending law, a company should be empowered by a combination of (i) an ordinary resolution of the members and (ii) a board resolution to reinstate the enforceability of rights attaching to shares of any director, without the need for the director or secretary to apply to court, where the director-shareholder or secretary-shareholder makes an affidavit for or representation to the company that the failure to make the notification was inadvertent, and where the board is satisfied with that explanation. **(11.10.8 (v))**
- Rights attaching to shares of directors and secretaries (and persons controlled and connected to them, etc.) should be enforceable where the information required in the register of interests in shares has appeared in a register or a combination of registers of the company from no later than one month following the director or secretary concerned acquiring the shares or debentures in question. **(11.10.8 (vi))**