

DUTIES AND OBLIGATIONS OF THE DIRECTORS

Common law duties

Common Law recognises that a company director stands in a special relationship to the company of which he is a director and characterizes this relationship as a fiduciary relationship

Fiduciaries have obligations of good faith imposed upon them arising from the fact that they exercise power on behalf of others. A director owes these fiduciary duties to the company as a separate entity rather than to the individual shareholders. The director's status as a fiduciary gives rise to a number of specific duties which have been recognised by the courts of Ireland. Accordingly, a director must:

- a) act in good faith for the benefit of the company as a whole;
- b) carry out his functions with due care, skill and diligence;
- c) avoid putting himself in a situation where his interests are in conflict with the interest of the company;
- d) not make secret profits;
- e) acquire and maintain sufficient knowledge of the company and its business to allow him to perform his duties; and
- f) act for proper purposes not for any collateral purpose.

Statutory duties

The Irish Companies Act imposes wide ranging duties on directors. These are principally as follows:

- a) a general duty on directors to ensure that the company complies with the Irish Companies Acts;
- b) the directors are required to maintain proper books of accounts in respect of the company;
- c) a duty to prepare and have audited annual accounts;
- d) to maintain certain statutory registers to include an up to date register of shareholders of the company;
- e) to file certain documents with the Registrar of Companies; and
- f) to convene general meetings of the company; an annual general meeting each year and extraordinary general meetings in certain circumstances.