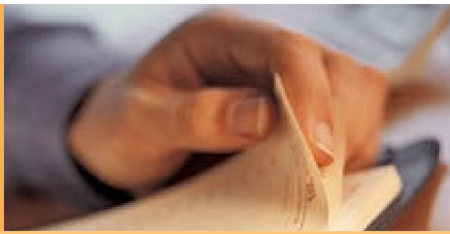
Companies

Their duties and powers



A quick guide

Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

Plain English
Approved by NALA

Introduction

We have produced this information booklet to explain the process of managing a company under the Companies Acts.

What is a company?

A company is a legal body created to run a business or social enterprise. It exists separately from the people who own and manage it. A company can make contracts, own property, have debts and take legal action.

Company structure

There are different types of company, including:

- limited and unlimited liability companies; and
- private and public companies.

Limited and unlimited liability companies

All companies are responsible for their debts. However, if an unlimited liability company cannot pay its debts, its owners (known as members) are liable for all those debts.

When a limited liability company fails, the members are only liable for the company's debts up to the amount of money they agreed to give to the company. For example, if members of a limited liability company each agreed to pay €100 for shares and have paid it, they don't have to pay any more to meet the company's debts. In this situation, people who are owed money by the company will not get all the money due to them.

Because people may lose money in dealings with limited liability companies, the companies must disclose reliable information so that people can decide if they want to deal with them.

Private and public companies

A limited or unlimited liability company can be either private or public.

A private company is one that doesn't sell shares to the public and has fewer than 100 members. The most common form of private company in Ireland is a private company limited by shares. Most private limited companies must have the word 'Limited' (or, in Irish, 'Teoranta') after their name.

Any company that is not a private company is a public company. A public company limited by shares must have 'public limited company' or 'plc' (or, in Irish, 'cuideachta phoiblí theoranta' or 'cpt') after its name. It may choose to trade its shares on a stock exchange.

Forming a company

To form a company in Ireland, you must send certain information and documents to the Companies Registration Office (CRO) including:

- the company name;
- a statement that the company will do business in Ireland;
- the addresses of its planned business location and its registered office;

- evidence that at least one director of the company lives in Ireland (although there are some exceptions); and
- a memorandum of association and articles of association (which together make up the company's constitution).

After you send this information and a fee to the CRO, the CRO will register the company and return a Certificate of Incorporation. You can get more information on the formation of a company at www.cro.ie.

You can also buy an existing company from a company formation agent.

Constitution of a company

The memorandum of association (constitution) of a private company must contain five points:

- the company's name;
- its objects (the purpose for which it was set up);
- whether the company is a limited or unlimited liability company;
- the maximum number of shares the company can issue (known as the company's authorised share capital); and
- a statement that the members want to form the company, together with their names and addresses and the number of shares they each own.

The articles of association are the internal rules of the company. They set out how the members should act in relation to the company and to each other.

Company directors

Every company must have at least two directors. The company's members choose the directors to manage the company for them. The directors need not be company members.

Company secretary

Every company must have a company secretary, whose main role is to help ensure that the company conducts its business according to company law.

Duties of a company

Companies have various legal duties including:

- keeping proper books of account;
- preparing annual financial statements;
- arranging the annual audit (unless the company can decide not to have an audit);
- organising general meetings of the company;
- keeping registers and other information; and
- sending certain documents to the CRO.

Keeping proper books of account

Every company must correctly record and explain any payments to or from the company, its customers and suppliers. The books should also accurately show the company's financial position.

Annual financial statements

Companies must prepare their financial statements every year using the information in their books of account and other relevant information. The statements should give 'a true and fair view' of the company's financial position.

The financial statements normally include:

- a profit and loss account that records the company's income and expenditure and shows if the company has made a profit or loss;
- a balance sheet that shows the company's assets and liabilities at the end of the year; and
- a directors' report that informs members about the company's business and performance.

Annual audit

Many companies must have their financial statements audited annually. An audit is when an independent expert (auditor) reports an opinion to the members as to whether the financial statements give a true and fair view of the company's finances and agree with its books of account.

General meetings

Every company, except a private limited company with one member, must hold an annual general meeting (AGM). Sometimes, a company may need to call an extraordinary general meeting (EGM).

Registers

Every company must keep certain documents. These include registers of its directors and secretaries and all of the members of the company. The registers should include details of the directors' and company secretary's shares and other interests in the company.

Companies must also keep a minute book for recording what was said and decided at general meetings, board meetings and board sub-committee meetings.

Every company that gives a debenture (a type of loan) must keep a record of it. The company must also record any assets that it gives as security for borrowing money.

Disclosures

Companies must send certain documents to the CRO including:

- the company's annual return which includes its financial statements;
- notice of a change of registered office, director, secretary or their details;

- the creation of a mortgage or charge on the company's property; and
- a memorandum of satisfaction of a charge (a statement that a loan has been repaid).

Anyone can look at documents sent to the CRO.

Powers of a company

In general, a company is free to carry out its business (its objects) as stated in its memorandum of association.

Conclusion

A more detailed information book on companies is available under Decision Notice D/2002/1 from www.odce.ie.

If you have doubts about company procedures and what you need to do under the law, you should get independent professional advice.

Notes

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