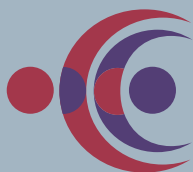




Penalties for Breaches of Company Law

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 risks of failing to comply with the duties and obligations of company law.

Court penalties

Breaches of certain obligations in company law can have serious consequences for a company, company director or any other person who is responsible for those breaches. Those consequences can include court proceedings against those who are considered to be responsible for the breaches. A person who is unsuccessful in defending a legal action will usually be subject to some form of penalty. They will usually also have to pay their own legal costs and the costs of the person who started the proceedings.

Criminal proceedings

A company or individual can be prosecuted for committing an offence in company law. There are two types of criminal offences:

- a summary offence, which is considered to be less serious and is dealt with in the District Court before a judge only; and
- an indictable offence, which is generally a more serious offence. Depending on the circumstances, it may be prosecuted either in the Circuit Court before a judge and jury or in the District Court if the District Court judge agrees to do so.

The Office of the Director of Corporate Enforcement (ODCE) has the authority to start a prosecution in the District Court under the Companies Acts. It may do so once it has carried out an investigation and has sufficient evidence to prove that the offence was committed. The Companies Registration Office (CRO) (www.cro.ie) also has the authority to prosecute offences in the District Court involving a failure to file documents with it.

Only the Director of Public Prosecutions has the authority under company law to start a prosecution for indictable offences in the Circuit Court. This decision will generally be based on the evidence obtained in ODCE investigations. If a company or individual is later found to be guilty of the offence, they will be convicted.

In general, the highest penalties on conviction are:

- €1,905 and/or 12 months in prison for each summary and indictable offence prosecuted in the District Court; and
- €12,697 and/or five years in prison for each indictable offence prosecuted in the Circuit Court.

A small number of very serious offences carry higher penalties. Examples include fraudulent trading (carrying on a company's business knowing that its increasing debts will never be paid) and market abuse (such as insider dealing of company shares that are listed on a stock exchange).

Civil proceedings

Individuals who breach their duties under company law can also be sanctioned in civil proceedings.

Disqualification

People convicted in the Circuit Court of an indictable offence relating to a company or involving fraud or dishonesty are automatically disqualified for five years from acting as company officers (directors, company secretaries, auditors, liquidators and so on).

The High Court may also disqualify for a period of time anyone whom it is satisfied is guilty of fraud or a breach of duty or is otherwise unfit to be involved with company management because of their past. In particular, an individual may be disqualified if they:

- are guilty of two or more offences of not keeping proper company books of account;
- are guilty of three or more company law defaults; or
- were the directors of a company that owes money to other people and was struck off the Register of Companies for failing to file annual returns while they were directors.

The ODCE and other people such as liquidators can apply to have an individual disqualified.

Restriction

When a company cannot pay its debts, the High Court may restrict any of its directors for five years if they cannot satisfy the Court that they acted honestly and responsibly in the company. Restriction limits an individual to acting in certain companies as a director or secretary or being involved in these companies' formation or promotion. These companies must have a significant amount of money invested in them by their members. The ODCE and other people or organisations, such as liquidators, can apply to have directors restricted.

Personal liability

The High Court can make an individual personally liable for all of a company's debts in certain circumstances, including where they are found:

- to have known that they were involved in carrying on company business either recklessly or with an intention to defraud someone; or
- not to have kept proper books of account in a company, which in turn contributed to the company's inability to pay its debts.

Company creditors and liquidators can make these Court applications.

Defaults

Where a company or any of its officers breaks an obligation under company law, it may be served with a notice requiring it to remedy the default within 14 days. If it is not remedied, the company or officer may face High Court proceedings. The Court can direct it to correct the default. Members, creditors and the ODCE are some of the people and organisations who can take this action.

Other court sanctions

Where misconduct arises in companies that cannot pay their debts, the High Court may take other exceptional measures, including the arrest of company officers and the seizure of personal property if the officers are evading responsibility for some of the debt. Liquidators and the ODCE can ask the Court to act in this way.

Other risks

Late filing of company annual returns

The CRO can impose additional charges when annual returns are filed late.

Strike off

When a company does not, for example, send its annual return to the CRO, the CRO may strike the company off the Register of Companies. This means the company no longer exists. If this happens, the ownership of the company's assets automatically goes to the Minister for Finance and any debts owed to the company by its directors, officers and members remain.

Conclusion

If anyone is prejudiced (negatively affected) by the conduct of a company or one of its officers or has concerns that the conduct of the company or one of its officers may not be lawful, they should:

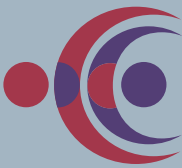
- take independent professional advice to find out what legal remedies they may have;
- report any breach of company law to the ODCE; or
- report a breach of any other law to the Garda Síochána or the responsible regulatory body.

Misconduct by an auditor, liquidator or other professional person may also be brought to the attention of their professional body.

Notes



Notes



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