A GUIDE TO DIRECTORS' DUTIES AND RESPONSIBILITIES

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PART I

1. Introduction

The creation of the office of the Director of Corporate Enforcement (the "ODCE") together with the enactment of the Company Law Enforcement Act, 2001 (the "2001 Act") has sharply brought into sharp focus the importance of the duties and responsibilities owed by directors to their company. The Companies Act 1990 (the "1990 Act") significantly extended the duties and responsibilities owed by directors to their company. The creation of the OCDE will ensure stricter compliance with these requirements and necessitate a higher degree of awareness from directors as regards these duties and responsibilities.

The purpose of this memorandum is to provide a brief overview of these duties and responsibilities. In doing this, we have striven to explain these duties and responsibilities in a non-legal manner and to be as concise as possible. For this reason, it has not been possible to deal with some of the complex legal issues which directors are sometimes faced with in the discharge of their duties and responsibilities and specific advice should be sought with regard to particular circumstances. This memorandum is a general guide only. It is not intended to be a definitive statement of the law relating to company directors.

2. Concept Of A Director

While a company is recognised by law as a legal person, in practice it cannot act without the assistance of agents. The most important agents of a company are its directors. As agents, directors are in a unique position in that they receive most of their instructions from themselves. The law has recognised this unique position and in many circumstances will require the directors of a company to behave towards the company and its property in a manner which is very similar to trustees and their trust. For this reason, a director can be considered a fiduciary agent.

3. Executive And Non-Executive Directors

A director may also be an employee of the company with some form of senior executive responsibility. If so, he is commonly referred to as an executive director as opposed to a non-executive director who has no involvement in the day to day

management of the company. This does not alter the nature of the duties and responsibilities owed by such a director to his company, though it may be that more will be expected of such a director in his compliance with these duties and responsibilities since he will usually have a greater knowledge of the management of the company and its affairs and be in a better position to discharge these duties and responsibilities. As an employee, an executive director will also owe other duties and responsibilities under his contract of employment with the company. Other than this, the duties and responsibilities of executive and non-executive directors are the same.

4. Sources Of Directors' Duties And Responsibilities

The following are the main sources of directors' duties and responsibilities:-

4.1 the general law relating to companies as interpreted by the courts;

4.2 the Companies Acts, 1963-2001 (the "Companies Acts");

4.3 the memorandum and articles of association of the company.

PART II

1. The General Law Relating To Companies As Interpreted By The Courts

Over time certain duties and responsibilities have come to be generally accepted by the courts as being owed by directors to their companies. These duties and responsibilities are not exhaustive and may in time be added to by further court decisions. In addition, there is no universally agreed formulation for these duties and responsibilities. Different judges have given them different names. Nevertheless, the duties and responsibilities owed by directors under the general company law may be summarised under the following categories:-

1.1 Duty to act in the best interests of the company

It has long been accepted that a director must act in the best interests of the company. This is a subjective test and not an objective test. Provided a director satisfies himself that he is acting in the best interests of the company,

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he will not be in breach of this duty if it subsequently transpires that the best interests of the company were not being met by such action.

In recent years this duty has been slightly confused by court decisions which suggest that a director must also have regard to the interests of the company's shareholders and its creditors. In addition, the 1990 Act now requires a director in carrying out his duties for the company to have regard to the interests of the company's employees. Often, the interests of each of these parties will be conflicting and, though a director will have to have regard to each of them to different degrees, ultimately, any decision taken must be in the best interests of the company. The scope of these conflicting duties is discussed further in Section 2 below.

A corollary to this duty, is that directors must not disclose confidential information which they obtain in their capacity as directors of a company, since this will generally not be in the best interests of the company. In addition, the unauthorised disclosure of confidential information can have serious consequences in relation to companies whose shares are dealt in or quoted on a recognised stock exchange under the insider dealing rules of the Companies Acts and, where appropriate, under the continuing obligations rules of the relevant stock exchange. This is discussed further in Sections 2 and 3 below.

1.2 Duties of diligence, skill and care

It is generally accepted that a director is not required to exercise any greater degree of skill than may reasonably be expected from a person of his knowledge and experience. For this reason, when considering a transaction involving financial or legal issues, more will be expected of a director with experience in those areas than one who has no knowledge or experience.

Likewise, when exercising their duties, the degrees of diligence and care which are expected of each director will vary and, again, will depend on the knowledge and experience of each of them. While the law does not require a

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director to involve himself in all the transactions of the company or to devote his full attention to the company or even attend every board meeting, a director will be expected to involve himself in matters and satisfy himself that they are being carried out correctly where he is in possession of information which from his knowledge and experience would put him on notice of the need to take action so as to protect the interests of the company.

1.3 Duties of good faith and honesty

In carrying out his duties and responsibilities, a director must at all times act with good faith and honesty in the best interests of the company.

1.4 Duty of personal performance: delegation of duties

Unless a company's articles provide otherwise, directors may not delegate their duties and responsibilities to a third party. However, most companies allow such delegation by inserting provisions in their articles of association allowing for the appointment of a managing director, committees and/or attorneys to whom all or some of the duties and responsibilities of the directors may be delegated. In such circumstances, the directors will only be required to take action where they have knowledge or suspicion of any failure to carry out these duties and responsibilities by the person or body to whom these duties have been delegated. In this regard, the director would be entitled to rely on the reports and statements by such person or body and would normally not be required to look any further in order to ensure that the duties and responsibilities have been carried out.

1.5 Duty as to conflicts of interests

In recognising the unique relationship between a director and his company and the position of trust which he occupies, the courts have developed a rule that a director may not benefit from his position as a director of a company and he must account to the company for any benefit accruing to him in such circumstances. This is a very strict rule. It will not be an excuse to show that the company was not in a position to obtain the benefit. The strictness of this

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rule is explained by the fact that the courts see it as a means of deterrence or for the avoidance temptation to directors.

There are two main exceptions to this strict rule. First, a company may provide in its memorandum and articles of association for circumstances in which a director may obtain a benefit. The best example of this are the provisions allowing for the payment of remuneration to directors which are found in the memorandum and articles of association of most companies. In order to have the benefit of this exception, the procedures set out in these provisions must be closely followed.

The other exception, is that a director may obtain a benefit where he has made a full disclosure of the facts to the shareholders of the company and has obtained their consent to a benefit being obtained by him.

2. Specific Requirements Of The Companies Acts

There are a great number of specific duties and responsibilities imposed on directors by the Companies Acts. Many of these are only relevant when the company is engaged in particular types of transactions. For this reason, the duties and responsibilities set out below are confined to those which must be complied with on a regular basis by directors.

2.1 Duties owed to the company: regard to interests of others

The introduction of the concept of "reckless trading" and the further tightening of the law on "fraudulent trading" by the 1990 Act have indirectly increased the need for directors to have regard to the interests of a company's creditors. However, this is probably confined to situations where the company is in financial difficulty or is insolvent.

The 1990 Act requires directors to have regard to the interests of the company's employees in general, as well as the interests of its members, when performing their duties and responsibilities. The 1990 Act specifically recognises that duty to have regard to the interests of employees is owed to the

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company and provides that it shall be enforceable in the same way as any other fiduciary duty owed to a company by its directors.

2.2 Duty to keep corporate books

The 1990 Act has greatly strengthened the obligations on a company to keep proper books of accounts. Such books must correctly record the company's transactions and enable the financial position of the company to be determined with reasonable accuracy. A director who deliberately or negligently fails to ensure compliance with this requirement will be guilty of an offence. However, a director will not be liable where he can show that responsibility for this requirement had been delegated to a competent and reliable person who was in a position to maintain the books. It is also an offence for a director or any other officer to destroy, mutilate or falsify a company's books and records.

Where a company in liquidation is unable to pay all of its debts and it is shown that the failure to keep proper books of account has contributed to this, or has resulted in substantial uncertainty concerning the company's assets and liabilities or has substantially impeded its orderly liquidation, a court may declare that a director or any other officer who is in default of the above obligation shall be personally liable, without any limitation or liability, for all or such part of the debts or liabilities of the Company as the Court may determine potentially without limit. Again, directors will avoid liability in such circumstances where they can show that they delegated their responsibility to a competent and reliable person who was in a position to maintain the books.

2.3 Annual reports and accounts, general meetings and Companies Acts returns

Each year the directors of a company are required to lay before the annual general meeting of the company a profit and loss account and balance sheet in respect of the company, although these requirements are slightly modified in the case of single member companies. If relevant, this should include a group profit and loss account and balance sheet. These financial statements must

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give a true and fair view of the state of affairs of the company/group at the end of its financial year and must be signed on behalf of all of the directors by two of the directors. Included with these financial statements there must be a report of the directors on the state of the company's affairs and a report of the company's auditors on the accounts examined by them. Failure by a director to take all reasonable steps to ensure compliance with these obligations is an offence, except that it will be a defence to show that the director concerned had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that these obligations were complied with and was in a position to discharge that duty.

A company is also required to make an annual return in the prescribed form to the Registrar of Companies. In addition, the company may need to make other returns in the course of the year in regard to certain other matters. These obligations are not confined to the directors of the company but may extend to certain of its officers.

2.4 Disclosure of interests

Following on from the duty as to conflicts of interests referred to in Section 1 above, the Companies Acts impose a specific duty on directors to disclose their interests in any contracts to be entered into by the company. For nearly all companies, this requirement is contained in Section 194 of the Companies Act, 1963. In short, it requires that a director who is in any way, whether directly or indirectly, interested in a contract or arrangement, or proposed contract or arrangement, with the company to declare the nature of his interest at the meeting of the directors of the company at which the contract or arrangement is first considered. Any such disclosure must be recorded in the minutes of the meeting concerned and the relevant director's vote may not be counted in the decision relating to the matter, nor shall he be counted in the quorum for the meeting so long as the matter, is being considered. The Act provides that the Chairman of the company shall be empowered to decide whether a director has sufficiently complied with this requirement and his decision shall be final.

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Where a director fails to comply with this duty, any contract or arrangement entered into by the company will be rendered voidable at the instance of the company and, if avoided by the company, the director will be required to account to the company for any profit which he has obtained or any loss caused to the company. There have been recent court decisions in the United Kingdom which have interpreted the equivalent duty under their company legislation to the effect that a director will be required to comply strictly with this notification requirement even in regard to matters which are previously known to all of the directors of the company.

2.5 Furnishing information

The 1990 Act imposes an obligation on directors and certain other officers of a company to respond to a request for information from the company's auditors. Any director who knowingly or recklessly supplies materially misleading, false or deceptive information will be guilty of an offence.

In certain circumstances, persons, including directors, are obliged by the 1990 Act to furnish information and documents to other parties such as, for example, the Minister for Enterprise, Trade and Employment and the Registrar of Companies, and will be guilty of an offence for failing to do so.

Directors who, pursuant to any requirement under the Companies Acts, answer questions, provide explanations, make statements or produce, lodge or deliver materially incorrect returns, reports, certificates, balance sheets or other documents, either knowingly or recklessly, will be guilty of an offence.

2.6 Restricted transactions

The Companies Acts prohibit a company from entering into certain arrangements or transactions with any of its directors, or, in some circumstances, persons connected with such directors. However, the Companies Acts provide that the company may enter into some of these arrangements or transactions if it has first obtained the consent of the

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company's shareholders in general meeting. This is a particularly complicated area and specific advice should be sought in each case before deciding whether or not an arrangement or transaction is prohibited. The categories of prohibited transactions are as follows:-

2.6.1 Contracts of employment for directors lasting for more than five years: A fixed term employment or consultancy contract for a director, which cannot be terminated by the company or may be terminated only in specified circumstances, may not exceed five years unless the shareholders of company have approved the contract in general meeting. This approval should be obtained in advance since ratification may not be possible later. In a group situation, the holding company in general meeting will also have to approve the contract if one of its directors is involved.

2.6.2 Loans to directors and connected persons: The 1990 Act as amended by the 2001 Act contains extensive provisions prohibiting direct and indirect loans, credit transactions and guarantees, in excess of a certain value, which are provided in relation to directors of companies or their holding companies and certain connected persons. A connected person includes the spouse, parent, child, brother, sister and partner of a director. A connected person also includes a company controlled by a director, either alone or together with any other connected person. Control means an interest in one half or more of the equity share capital or an entitlement to exercise one half of the voting rights at a general meeting. Such transactions may be set aside by the company, except in certain circumstances.

Transactions having an aggregate value of less than 10% of a company's net assets and transactions relating to vouched expenses are exempt from these prohibitions. Advances on a director's expenses must be settled within six months. As another exemption, companies may provide a loan or credit to any connected person in the ordinary

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course of business provided that the terms are not more favourable than would be offered to an unconnected person. All transactions entered into by a company with or for the benefit of its holding company, its subsidiary or a subsidiary of its holding company shall also not be prohibited. Finally, a company may now enter into a guarantee or provide security in connection with a loan, quasi loan or a credit transaction provided the special authorisation procedure introduced by the 2001 Act has been complied with. This procedure involves the authorisation of the proposed transaction by special resolution supported by a statutory declaration sworn by two directors stating the substance and objectives of the transactions and supplemented by a report of an independent person confirming the reasonableness of the opinions set out in the declaration.

2.6.3 Substantial property transactions involving directors: The 1990 Act prohibits a company from entering into any arrangement with its, or its holding company's, directors (or persons connected to such directors) to sell or acquire non-cash assets in excess of €63,487 or 10% of a company's net assets. "Non-cash assets" is defined under the 1990 Act and can cover a wide range of arrangements. These transactions may be subsequently ratified by the company's members provided this is done within a reasonable period.

2.7 Insider Dealing

If the shares of the company are not quoted on any stock exchange, the provisions dealing with insider dealing in the 1990 Act may be thought to have little application to the company's directors. However, the insider dealing provisions of the 1990 Act are relevant in two important respects.

First, if the directors are officers of a subsidiary of a company quoted on a stock exchange, they are deemed to be "insiders" in respect of the listed company. Accordingly, it is unlawful for any of the directors to deal in the "securities" of the company when they are in possession of information that is

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not known to the public but, if it were, would be likely materially to affect the price of those securities. The "securities" of the company is not just limited to its ordinary shares but includes any options in respect of those shares and, also, convertible loan notes which the company may issue.

The insider dealing provisions of the 1990 Act are also relevant when any company is involved in any proposed or actual transaction involving another company or the securities of that other company where that other company's securities are dealt on a recognised stock exchange. It is unlawful for the directors of a company to deal in the securities of that other company where they are in possession of undisclosed price sensitive information which relates to that proposed or actual transaction or the fact that such transaction is no longer contemplated. An obvious example of this would be where the directors of a company become aware of a take-over offer being considered by the board of the company. In such circumstances the directors of the company would be prohibited from dealing in the securities of the target company. A slightly less obvious example is where a company is negotiating a major commercial agreement with a listed company which is likely to have an effect on the share price of that listed company. In such circumstances, the directors of the company would be precluded from dealing in the shares of that listed company.

Most directors can readily appreciate how the above examples have been prohibited as constituting "insider dealing". However, the provisions of the 1990 Act go further and prohibit certain other transactions which might not be thought to constitute insider dealing.

Under the 1990 Act, it is an offence for a person who is prohibited from dealing in the securities of a company because he possesses undisclosed price sensitive information to communicate that information to any person if he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing in the securities of the Company. It is assumed that directors will not deliberately pass on price-sensitive information

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with the intention that a third party will deal in the relevant securities. However, where undisclosed price sensitive information is passed on for other reasons, it may nevertheless constitute an offence if the director concerned ought to have realised that some or all of the recipients would make use of that information for the purpose of dealing in the securities of the Company. This can place directors in a very difficult position. Where they have decided to release confidential information to third parties but have formed the view that such third parties will not use that information for dealing, they will find themselves in a very embarrassing position if any of those third parties do in fact subsequently deal on the basis of that information. It may be that if a criminal prosecution is brought the director concerned will be acquitted because the prosecution will not be able to prove beyond a reasonable doubt that the director knew or ought to have known that the information would be used in this manner, but at this stage the director's reputation would most likely have been seriously injured.

The 1990 Act also provides that where an officer of a company is precluded from dealing in certain securities, his company shall also be precluded. The 1990 Act, allows two exceptions to this prohibition. The first involves the use of "Chinese walls" and the other is thought to allow the company to make portfolio investments provided its decisions are not motivated by any undisclosed price sensitive information. "Chinese walls" is an expression used to describe arrangements adopted by companies to ensure that confidential information received by persons or companies within a group is not communicated to other persons or companies who have no involvement in the matter. Both of these exceptions are strictly limited and proper advice should be obtained before relying on them.

A more useful exception for directors created by the 1990 Act is the "window period". This exception recognises that directors may be precluded from dealing in a company's securities for a considerable period because they are in possession of undisclosed price sensitive information. During this period, they would be prevented from taking up any options which may have been granted

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to them by the company. Provided the director gives at least 21 days' notice to the relevant stock exchange of his intention to deal and he does in fact deal within the period beginning 7 days after the publication of the company's interim or final results, as the case may be, and ending 14 days after such publication, then he will be permitted to deal even though he is in possession of price sensitive information. However, the reason for dealing must not be motivated by the price sensitive information.

2.8 Shadow directors

The 1990 Act introduced the concept of "shadow directors" into Irish law. A shadow director is defined as a person on whose instructions the directors of a company are accustomed to act, other than through advice given in a professional capacity. Many of the liabilities which apply to directors are extended to shadow directors, including the prohibition of loans, disclosure of interests in shares, liability for insider trading, liability for fraudulent and reckless trading and exposure to restriction and disqualification orders.

The term "shadow director" could be interpreted as extending to both natural and legal persons. If this interpretation is adopted by the courts, holding companies, banks, venture capital and investment institutions could conceivably be shadow directors in appropriate circumstances.

2.9 Reckless and fraudulent trading

In short, fraudulent trading involves carrying on business with intent to defraud. A person found guilty of fraudulent trading may be exposed to criminal liability as well as personal liability for the debts of the company.

The 1990 Act created a new personal liability for directors and certain other officers of a company who have been involved in what the 1990 Act defines as "reckless trading." Any such person may become personally liable potentially without limit for all or part of a company's debts where it appears that the person was knowingly a party to the carrying on of the company's business in a reckless manner. This would also be relevant to directors of the company who

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were shown to be "shadow directors" of subsidiaries which had become insolvent through reckless trading.

2.10 One resident director

The Companies Amendment (No 2) Act 1999 (the "1999 (No 2) Act") introduced a new restriction: except in specified circumstances, one at least of the directors must now be resident in the State. This requirement applies to all companies incorporated since 18th April 2000 with effect from that date, and it is applicable to all other companies with effect from 18th April 2001.

There are two exemptions to this requirement. Firstly, if a company enters a bond up to a value of €25,395 securing the payment of any fine imposed on the company in respect of offences under the Companies Acts or fines and penalties under the Taxes Consolidation Act 1997.

Secondly, when the Registrar of Companies certifies, in an application made by the company, that the company has a real and continuous link with one or more economic activities that are being carried on in the State. The company must prove to the Registrar of Companies that it has such a link. For example, a written statement from the Revenue Commissioners given to the company within the period of two months preceding the application that that body has 'reasonable grounds' for believing that the company meets the requirements for the granting of a certificate.

A director is resident if he was present in the State for a period of 183 days or more in the immediately preceding year, or 280 days or more in the immediately preceding two years. However, during those periods he must be present in the State for 30 days running.

2.11 Limitation on the number of directorships

A person shall not be a director of more than 25 companies at a particular time. However, there are several exceptions to this rule, including public limited companies, public companies within the meaning of the Companies

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(Amendment) Act 1983 (the "1983 Act"), companies certified as having a real and continuous link with an economic activity being carried on in the State and companies coming within the Second Schedule to the 1999 (No 2) Act, ie, companies quoted on a stock exchange, investment companies and companies which have a licence to carry on banking or are exempt from the requirement to have such a licence.

2.12 Register of Directors

The existing requirements to maintain a register of directors and secretaries have been added to by the 1999 (No 2) Act. Now, it must contain the following information concerning each director: present forename and surname and any former forenames and surnames; date of birth; usual residential address; nationality; business occupation and any other directorships held by him here or abroad or formerly held by him.

This act also provides for any default by the company in giving the required notification to the Registrar of Companies on the resignation or removal of a director or secretary. That person may request the company to notify the Registrar of Companies of the cessation of their office. If the Company fails to do so, he may personally forward such notice to the Registrar of Companies and every officer of the company.

The 1999 (No 2) Act additionally provides that if as a result of these provisions there are no directors recorded in the Company's file in the Companies Registration Office, the Registrar of Companies may strike the company off the Register of Companies as defunct.

3. STOCK EXCHANGE REQUIREMENTS

When a company's share or loan capital is dealt in or quoted on any market of the Irish Stock Exchange, the company will be required to comply with certain requirements and to ensure that it will continue to comply with these and other requirements following admission. These requirements, in the case of companies admitted to the

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Official List of the Irish Stock Exchange, are found in the Stock Exchange's "Sourcebook of Rules and Guidance" (the "Listing Rules"). The directors of the company should themselves, in turn, ensure that any persons appointed as directors to subsidiary companies can be expected to assist in complying with these requirements. Their co-operation is essential in order for the directors of the company to comply with the requirements of the Stock Exchange.

The Listing Rules set out various specific obligations which it expects listed companies to comply with on an ongoing basis. These are known as the "continuing obligations" and are found in Section 9 of the Listing Rules. Underlying the continuing obligations are the two overriding principles that directors of listed companies:-

3.1 act fairly towards, and treat equally, all shareholders of the company; and

3.2 avoid the creation of a false market in the shares of the company.

These two principles are most clearly reflected in the requirements of the Listing Rules in respect of the disclosure of information. The Irish Stock Exchange attaches great importance to these requirements, so much so, that failure to comply may lead to the suspension of the company's listing.

As a further precaution to ensure compliance with its obligations and principles, the Listing Rules requires listed companies to ensure that the directors are bound by a code of standards following the model code set out in the Listing Rules governing transactions by such directors. In turn, this model code requires that:-

> "A director must not deal in any securities of the listed company at any time when he is in possession of unpublished price-sensitive information in relation to those securities, or otherwise where clearance to deal is not given".

The company may adopt various codes of conduct. These are discussed further below.

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The Irish Stock Exchange has also decided that it may publicise the failure of the directors of a listed company to discharge their responsibilities under the Listing Rules and, even, name any director whom it considers to be individually at fault. It is most unlikely that the Irish Stock Exchange will refer to individual directors of subsidiaries of a listed company, but the actions of such directors could result in the company being criticised in this manner. In addition, the Irish Stock Exchange has said that it may criticise a company if it is of the view that the retention of office by a particular director is prejudicial to the interests of investors in view of previous conduct of that director. If such a director continues in office notwithstanding the criticism, the Irish Stock Exchange reserves the ultimate sanctions of suspending or de-listing the company.

PART III

Consequences of breach of duty

A breach of any of the duties and responsibilities discussed above may result in liability on the part of the director concerned under several different heads. The following are the main categories:-

1.1 Personal liability

An action may be brought by the company against the director, to render him personally liable for any loss caused to the company by, or to account for any profit obtained by him from his misconduct.

Often directors of companies enter into indemnity contracts with their companies in respect of their personal liability. Alternatively, such an indemnity may be contained in the articles of association of the company. Under section 200 of the Companies Act, 1963, such indemnities are not enforceable by a director insofar as they seek to indemnify the director in respect of any liability owed by him to the company as a consequence of his negligence, default, breach of duty or breach of trust. The same applies to any indemnity in respect of fines imposed on a director under the provisions of the Companies Acts. However, where proceedings are brought against a director

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in such circumstances and judgment is given in his favour or he is acquitted, then it is likely that he will be entitled to rely on the indemnity.

In addition, in certain limited circumstances which have been discussed above, a court may order that the relevant director be held liable without limit for the debts of the company.

1.2 Fines and imprisonment

In the case of duties and responsibilities which are imposed under the Companies Acts, fines and, in some cases, imprisonment can be ordered by a court in the event that a director is found to have breached any of these duties and responsibilities. The 1999 (No 2) Act further provides that where a person becomes or remains a director or shadow director of more than 25 companies, his appointment may be void and he may be prosecuted summarily by the Registrar of Companies.

1.3 Restrictions and disqualification orders

The law regarding restriction and disqualification orders is contained in the 1990 and 2001 Acts. A director of a company that enters insolvent liquidation must now satisfy the High Court that he has acted honestly or potentially face a five year restriction order. An application to the High Court seeking such a restriction order may be made by a liquidator, receiver or the Director of Corporate Enforcement. This restriction prohibits a person from being a director or officer or being otherwise involved in the promotion of a company unless the nominal value of the allotted share capital of a private company is €63,487 or €317,435 in a public company. The restriction period may be extended or reduced by the High Court subsequent to applications by appropriate parties. Importantly, a liquidator of an insolvent company is now obliged to apply for restriction orders in respect of each of the company's directors unless the Director of Corporate Enforcement directs otherwise.

A disqualification order will prevent such persons from acting as a director or being involved in the management of the company for a period of five years.

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Under the 1990 Act, a director could be disqualified if convicted of an indictable offence involving fraud or dishonesty in relation to the company's affairs. Since the introduction of the 2001 Act the Director of Corporate Enforcement may now also petition the High Court where the directors actions have shown such director's unsuitability to involvement in the management or promotion of the company. These circumstances now include default in complying with filing, notification and other such requirements. On breach of a disqualification order persons shall be guilty of a criminal offence and the period of disqualification may be extended for a further period of ten years. Such persons may also become personally liable for the debts of a company in the event of an insolvency within twelve months of the order being made.

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