
Briefing

Interests in Shares and Debentures - Know when to Disclose



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Under the Companies Act 2014 (the “Act”) directors and secretaries (“officers”) are obliged to disclose to the company certain interests in shares and debentures of the company or a group company. These disclosure obligations are in addition to the duty of directors to disclose their interests in contracts with the company. Further information on this duty is available [\[here\]](#).

Duty to Disclose

The Act requires an officer of a company to disclose to the company his or her interests (and the interests of certain persons related to him or her) in shares and debentures of the company or a body corporate of the same group. A person related to a company's officer includes an officer's spouse, civil partner or minor children. An interest in shares and debentures is widely defined as an interest of any nature.

These disclosure requirements in the Act apply to shadow directors and to *de facto* directors. However, the making of such a notification is not of itself proof that the person making the disclosures to the company is a shadow director or a *de facto* director.

Exceptions

An officer is not obliged to disclose certain interests including those that:

- in aggregate, do not represent more than one per cent (1%) in nominal value of the company's issued share capital of a class carrying voting rights or is in shares or debentures not carrying voting rights except for the right to vote in specified circumstances; or

- are held through a UCITS or an authorised unit trust fund or investment company; or
- are held in the capacity of an attorney or a proxy; or
- are held in a body corporate which is the wholly owned subsidiary of another body corporate.

Disclosure Events

The Act lists the instances in which the duty arises to notify a company in writing of the holding of a disclosable interest and prescribes certain requirements for such disclosures.

Disclosable Interest Acquired or Ceasing

Where an officer or a related person acquires or ceases to have a disclosable interest in the company or a body corporate of the same group, the officer must notify the company.

Officer Appointment

A person, upon becoming an officer of the company, must notify the company of any disclosable interest that he or she or a related person holds in the company or in a body corporate of the same group. This duty to disclose arises when the person becomes an officer of the company.

The notifications required in these three instances must be made within 8 days after the event giving rise to the duty to make the notification. In the event of a disclosable interest being acquired or ceasing, this requirement can also be satisfied by delivering a copy of the transfer instrument to the company within 30 days after the date of the instrument.

Grant and Exercise of Options

Where an officer (or related person) is granted or exercises options granted by another body corporate of the same group, the officer must notify the company.

Contract for Sale / Assignment of Rights

Where an officer (or where he or she becomes aware that a related person) enters into a contract to sell shares or debentures of the company or a body corporate of the same group or assigns a right granted to him or her to subscribe for such shares or debentures, the company must be notified. In this instance, and in the event of a grant or exercise of options, the time limit for notification is 5 days after the date of the event giving rise to the duty to make the notification.

Register of Interests

Whenever a company receives information from an officer as a consequence of that officer fulfilling his or her duty to disclose his or her interests, the company must, within 3 days after the date of receipt of that information enter in the register of interests that information and the date of entry. The register must be open to inspection by members without charge and open to inspection by others on the payment of a small fee. Certain regulators may also inspect the register.

If a company fails to comply with its obligations to keep such an up-to-date register, the company and any officer who is in default will be guilty of a category 3 offence punishable, on summary conviction, by a fine of up to €5,000. The court can, on application being made to it, compel an immediate inspection of the register or make an order directing that a copy of the register, or part of it, be sent to the person requesting it.

Use of an Agent

Where an officer has authorised an agent to acquire or dispose of shares or debentures on his or her behalf, that officer must ensure that the agent notifies him or her of any such acquisition or disposal immediately where such a transaction would give rise to a notification obligation. Failure to comply with this provision will be deemed a category 3 offence punishable, on summary conviction, by a fine of up to €5,000.

Enforcement and Penalties

Criminal sanctions apply where an officer does not notify within the required time. In addition, no right or interest of any kind in respect of the shares or debentures concerned will be enforceable by him or her by action or legal proceeding. The officer in default or any person affected can, however, apply to court for relief. This sanction will not apply to a duty relating to a person ceasing to be interested in shares or debentures.

A company's members may address a breach of a disclosure obligation by passing a special resolution to protect third parties dealing with the company so that such a third party will be entitled to assume that all disclosure requirements under the Act have been complied with and that the registered holder is entitled to deal with the shares or debentures.

Conclusion

The disclosure obligations are complex in part so professional advice should be taken where an officer is unsure of his or her obligations (more so given the somewhat draconian sanctions for failure to disclose, as discussed above).

Further information is available from



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Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.



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