

In the Matter of the Companies Acts 1963-2009 and in the Matter of a Company and in the Matter of an application under Section 371 of the Companies Act 1963, as amended Between The Director of Corporate Enforcement AND a Company, and three directors of the Company.

Venue:

High Court, Dublin.

Judge:

Ms. Justice Mary Laffoy

The Application: Under Section 371 of the Companies Act 1963 (as amended) (“Section 371”) (and also under Section 383(3) of the Companies Act, 1963, as amended, in so far as the three company directors are concerned) the Director sought inter alia, the following Orders:-

1. An Order directing the Respondents to make good their defaults under : -
 - (a) Section 145 of the Companies Act, 1963, as amended, to produce for inspection the Minute Books for the Company for a specified period and to provide facilities for inspecting and taking copies of the contents of the said Minute Books to the Director; and
 - (b) Section 119 of the Companies Act, 1963, as amended, to produce for inspection the Register of Members of the Company and to furnish a copy of the Register of Members to the Director; and
 - (c) Section 195 of the Companies Act, 1963, as amended, to produce the Register of Directors and Secretaries of the Company for inspection and to furnish a copy of the Register of Directors and Secretaries to the Director.

2. An Order directing the Respondents to update and keep the aforesaid Registers and Minute Books on a continuing basis in accordance with their obligations under Sections 195, 145, 119 and 383(3) of the Companies Act 1963, as amended.

Outcome:

On 30th July, 2012, the High Court made an Order on consent in the following terms that: -

1. The proceedings be struck out against one of the Respondent Directors with no Order.
2. The proceedings be adjourned generally against the other Respondents ON CONDITION OF the following Undertakings to the Court of those Respondents:
 - (a) The Respondents' (each or all of them) Undertaking to the Court that at all times in the future and on a continuing basis, to maintain the registered office of the Company at an address in the State which is a functioning office and which is open during normal working hours, wherein it is kept and wherein inspection and working photocopying facilities are available, the registers of directors and secretaries and members of the Company and the minute books of the Company and other statutorily required books and registers and to which office all communications and notices for the Company and its directors may be addressed;
 - (b) The Respondents' (each or all of them) Undertaking to the Court that at all times in the future and on a continuing basis, to maintain, update and produce for inspection the Minute Books for the Company and to provide facilities for inspecting and taking copies of the contents of the said Minute Books to all parties entitled to inspect and take copies of Minute Books, in accordance with the provisions of the Companies Acts 1963 to 2009 and any amendments thereto (hereinafter "the Companies Acts");
 - (c) The Respondents' (each or all of them) Undertaking to the Court that at all times in the future and on a continuing basis to maintain, update and produce for inspection the Register of Members of the Company and to furnish a copy of the Register of Members on request to all parties entitled to such

inspection and copies, in accordance with the provisions of the Companies Acts;

- (d) The Respondents' (each or all of them) Undertaking to the Court that at all times in the future and on a continuing basis to maintain, update and to produce the Register of Directors and Secretaries of the Company for inspection and to furnish a copy of the Register of Directors and Secretaries to all parties entitled to such inspection and copies, and to ensure that the said Register of Directors and Secretaries contains all the statutorily required particulars and in accordance with the provisions of the Companies Acts;
- (e) The Respondents' (each or all of them) Undertaking to the Court that in each year they will cause the Company to hold an annual general meeting (or "AGM") and that they shall not allow more than 15 months to elapse between the date of one AGM and the next and that they shall cause the Company as soon as may be practicable but during 2012 to hold the AGM for 2012 and to hold the AGM in accordance with the requirements of the Companies Acts, and failure to do so will cause the Director of Corporate Enforcement to call an AGM of the Company;
- (f) The Respondents' (each or all of them) Undertaking to the Court to give proper notice of the AGM to all parties entitled to such notice in accordance with the provisions of the Companies Acts to include but not exclusively the requirements of Section 133 of the Companies Act 1963, as amended;
- (g) The Respondents' (each or all of them) Undertaking to the Court to furnish all statutorily required documents with the Notice of the AGM to all relevant parties to include, but not exclusively, all financial statements to be laid before the AGM, which AGM is to be called as soon as possible once such documents are made up, and to comply with the requirements of the Companies Acts regarding the presentation of accounts, returns and financial statements;

- (h) The Respondents' (each or all of them) Undertaking to the Court that every and any instrument appointing a proxy be made available for inspection to members of the Company and deposited at the registered office of the Company that is open during business hours at least 48 hours before the time for holding each and every AGM at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid.

AND THAT nothing in the above Undertakings is to limit in any way any statutory obligation of the relevant Respondents.

3. that there would be no Order as to costs; **AND**
4. **THAT** the Director will have liberty to apply and/or to re-enter the proceedings in the event that any of the Undertakings outlined at point 2 above are not complied with.