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Welcome to Bloomsbury Professional's Company Law Developments (4/26 August), a series where I summarise what I consider to be the most important recent case and statute law developments in company law in the preceding two months. In this issue, I summarise a number of important company law decisions in Ireland and the UK. The most significant decision from the Courts of the United Kingdome is their Supreme Court's decision in *Saxon Woods Investments Limited and ors v Costa* [2026] UKSC 21 where it was decided that directors were required to think and act in good faith and that a director, who honestly and in good faith believed the other directors were pursuing a course of action that was not in the best interests of the company, could not covertly subvert the management of the company's affairs by the board as a whole. Two Irish decisions on the disqualification of directors are also noted: *Re Clifton Court Hotel Ltd* [2026] IEHC 452 and *Re Ballylea Developments Ltd and Dexbury Ltd* [2026] IEHC 420. Also noted is the very important decision of the High Court in *Re Old Kildimo Group Holdings Ltd* [2026] IEHC 566 where the High Court (per Cregan J) held that s 179 of the Companies Act 2014 could not be utilised to break deadlock in a company in which there were two warring 50% shareholders and an order to convene a general meeting was a procedural remedy not designed to settle substantive rights. Another hugely important decision noted is that of Mr Justice Michael Quinn in *Globoforce Group PLC v Luxembourg Investment Company 276 SARL and ors* [2026] IEHC 397 where the High Court followed the compelling logic of the decision of the Privy Council in the United Kingdom in *Jardine Strategic Limited v Oasis Investments II Master Fund Limited and Others* [2025] UKPC 34 and determined that the shareholder rule did not form a part of Irish law such that shareholders are not automatically entitled to see legal advice received by their companies. Finally, the ex tempore decision of Simons J in a judicial review brought by the Registrar of Companies against a District Court order in Registrar of Companies v Biomed Diagnostics Ltd (unreported decision of 28 June 2026) is noted. There, Simons J held that the District Court's jurisdiction to extend the time permitted to file an annual return under *s 343(5)* of the Companies Act 2014 could not be invoked where an annual return had been filed already .

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Annual return

[Courtney, *The Law of Companies* (4th ed), Ch 18]

Annual return – Filing annual return – Seeking an extension of time within which to deliver an annual return to the Registrar of Companies – Annual return already delivered late and having incurred penalties – District Court extending the time in which to file – Registrar objecting to this claiming the District Court had no power to do so – Judicial review of District Court Order – s 343(5) of the Companies Act 2014 – Registrar of Companies v Biomed Diagnostics Limited (unreported ex tempore decision of Simons J on 28 June 2026). Int his ex tempore decision of the High Court, the Registrar of Companies sought to judicially review a decision of the District Court, purportedly made under s 343(5) of the Companies Act 2014, granting the company extra time in which to file its annual return late, despite the fact that the annual return had already been filed late. It appears that the purpose in seeing an order for late delivery was to justify the return of any penalties paid on the late filing. It was held that the order was wrongly made because the clear meaning and the ordinary natural meaning of the words in s 343(5) is that the power can only be exercised in circumstances where the document '*remains to be delivered, and in those circumstances the District Court erred in law and had no jurisdiction, in fact, to purport to extend time and then to deem service good in circumstances where, prior to it hearing the application, the relevant returns had already been filed'.*

Corporate Civil Litigation

[Courtney, *The Law of Companies* (4th ed), Ch 6]

The shareholder rule or discovery rule under which shareholders can claim to be entitled to see legal advice provided to the company – Whether the rule exists in Ireland following its conclusive recent rejection by the Privy Council in Jardine Strategic Limited v Oasis Investments II Master Fund Limited and Others [2025] UKPC 34 – Globoforce Group PLC v Luxembourg Investment Company 276 SARL and ors [2026] IEHC 397 (Quinn J). In this case the defendants challenged claims to privilege made by the plaintiff in respect of certain documents discovered and seeking better discovery of other documents. The defendants submitted that as a matter of Irish law the shareholders of a company are prima facie entitled to the production of legal advice provided to the company, accepting, however, that the rule does not override valid litigation privilege but that it does override legal advice privilege. Quinn J considered the Irish decision in Carlo Tassara Assets Management SA v Eire Composites Teoranta and ors [2016] IEHC 103 but noted that the case law relied on in that decision have since been overturned by the decision of the Privy Council in Jardine Strategic Limited v Oasis Investments II Master Fund Limited and Others [2025] UKPC 34. While the court was urged to treat Carlo Tassara as authority for the shareholder rule in Ireland, Quinn J said that he was not prepared to treat it as such without regard to the analysis of the Privy Council decision in Jardine. Quinn J held that the logic of the judgment of the Privy Council was compelling and should be followed, saying it was a significant factor that the shareholder rule is inconsistent with the rule in Salomon: a company is a legal entity separate and distinct from its shareholders.

Compliance and Enforcement

[Courtney, *The Law of Companies* (4th ed), Ch 29]

Disqualification order – Application brought by joint liquidators of a company – Liquidators also liquidators of two other companies – Grounds of application being that the respondent had been guilty of breach of duty; a declaration for personal liability had been made for fraudulent trading and his conduct made him unfit to be concerned in the management of a company – Period of disqualification – s 842(b), (c) and (d) of the Companies Act 2014 – Re Clifton Court Hotel Ltd [2026] IEHC 452 (Roberts J). This decision concerned the application of joint liquidators for the disqualification of a director; a consent order had previously been made which required, inter alia, that the respondent Mr Wu would procure the sale of property in Talbot Street in Dublin for not less than €1.95m; when the conditions were not met the court vacated the stay previously placed on the application and it was the case that Wu consented to a disqualification order but reserved the right to make submissions as to the appropriate duration. The application was based on the gateways in s 842(b) (breach of duty); s 842(c) a declaration of personal liability for fraudulent or reckless trading had been made; and s 842(d) conduct made the respondent unfit to be concerned in the management of a company.

In giving her ex tempore judgment, Roberts J noted the primary purpose of a disqualification was to protect the public (*Re Lo-Line Motors Ltd* [1988] BCLC 698 as endorsed by the Supreme Court in *Re CB Readymix Ltd; Cahill v Grimes* [2002] 1 IR 372. It was also noted that the purpose had also been identified by Finlay Geoghegan J in *Bovale Developments Ltd* [2013] IEHC 561 as extending to the improvement of corporate governance and deterring poor behaviour by directors. Roberts J noted that the approach on an application involved a two-stage test: did the conduct fall within the relevant category in s 842 and secondly whether the court in the exercise of its discretion should proceed to disqualify (citing *Re Wasteman Plant and Civils Ltd; Kirby v Rabbitte* [2020] IEHC 703. Despite the respondent Wu consenting to the order, Roberts J said it was appropriate to be satisfied that the grounds existed and she found that the did so exit as his failure to maintain proper books and records was a significant breach of his duty as a director, leading to him being personally liable under s 609; also a declaration of personal liability had been made under s 610 and his systematic diversion of monies out of the companies to pay the debts of other companies leaving trade creditors and the Revenue Commissioners unpaid made him unfit to be involved in the management of a company – so the three grounds in s 842(b), (c) and (d) were found to have been met. It seems from the judgment that Roberts J conflated the establishment of the grounds and the appropriateness of exercising the court's discretion as the remainder of the judgment concerned the period of disqualification.

As to the period of disqualification, the liquidators had been seeking 10 years but following negotiations were prepared to accept eight years. Roberts J noted there was no maximum or minimum in Ireland and that periods of over 10 years should be reserved for particularly serious cases. The approach to standardise in *Re Sevenoaks Stationers (Retail) Ltd* [1991] BCLC 325 was noted. Roberts J noted the periods imposed in the two recent Irish cases of *Re Wasteman Plant and Civils Ltd; Kirby v Rabbitte* p (15 years with a five per cent discount) and *Re Pembroke Dynamic Investment Services; Kirby v Conlon* [2021] IEHC 475 (18 years with a two year discount). It was noted that the respondent Wu was agreeable to a period of eight years but argued for mitigation; in this regard Roberts J agreed to a discount of nine months so that the period was for seven years and three months.

Disqualification order – Application brought by liquidator of two companies in creditors' voluntary liquidation – Application for restriction brought un the alternative – Ss 842 and 819 of the Companies Act 2014 – Re Ballylea Developments Ltd and Dexbury Ltd; Fitzpatrick v Power [2026] IEHC 420. The circumstances giving rise to this application for a disqualification order or, in the alternative, a restriction order was that it was alleged that the respondent was a director of two companies at a time when they were involved in a complex property transaction which the liquidator described as having been a sham transaction that was designed to avoid payments to the Revenue Commissioners and NAMA. The transaction concerned the sale of a building which was owned by Dexbury to an English investor for €23.5m; however to mitigate the CGT payable (as Dexbury had acquired the property for just over €7.5m) it was proposed to interpose Ballylea, a company with significant tax losses which had in fact been struck off the register, to set off against the capital gain so that Ballylea acquired the shares in Dexbury and then would take a transfer of the property from Dexbury and then transfer it to the UK investor by way of a sub-sale. Ballylea was restored to the register. The UK investor refused to take a sub-sale so the structure was changed to a JV between Ballylea and Dexbury so that Dexbury would receive €7.5m of the proceeds and Ballylea the balance. Written tax advice was received that the proposal was not part of a scheme undertaken mainly to avoid tax. After the sale went ahead, the purchaser transferred €22.05m to the bank which held security over the building and paid 4.4m to the solicitors for Ballylea and Dexbury. The surplus was distributed by Ballylea to various companies related to Dexbury's former principals, rather than to Ballylea's creditors. After both companies were placed into creditors' voluntary liquidation, the liquidator brought proceedings pursuant to s 608 and 612 alleging the improper transfer of assets and seeking compensation for corporate misfeasance. Those proceedings were settled on a confidential basis. Two other directors of the companies agreed to voluntary restriction undertakings but the respondent did not accept a similar offer.

Mulcahy J noted that the respondent was a governance professional who was the CEO of a corporate secretarial firm. He came on board after the transaction had been devised. The liquidator's complaints about the respondent were that he failed to co-operate with him, failed to properly inform himself regarding the business of Ballylea and Dexbury once appointed as director, and then, in effect, abdicated his responsibility for the management of the companies to a former director of Dexbury. Mulcahy J noted that the crux of the complaint was that the respondent was in effect 'a puppet who simply did another's bidding without properly scrutinising same' (at para 23).

In approaching the application for disqualification, Mulcahy J began by noting the two-stage test identified by O'Donnell J in *Kentford Securities Ltd* [2011] 1 IR 585. And noted that the onus of proof rests on the applicant. Mulcahy J then considered the law surrounding the restriction of directors, noting that the onus there was on the respondent rather than the applicant. Mulcahy J held that having regard to the liquidator's acceptance that the respondent was not involved in devising the transaction, the liquidator's application: 'falls well short of establishing the sort of lack of commercial probity, gross negligence or total incompetence on the respondent's part which would justify the making of a disqualification order. On whatever view one takes of the transaction, the respondent was presented with an arrangement which had the apparent support of both legal and tax advice as to its propriety. Though the respondent could (and should) have taken steps to acquaint himself with details of the transaction and other matters, his acquiescence in the transaction, against that background, discloses no lack of commercial probity or gross negligence' (at para 49). For those reasons he declined to make a disqualification order. Acknowledging that the question of whether he should be restricted was more difficult, Mulcahy J held that there was no evidence that Dexbury was insolvent at all and also found that Ballylea may have been insolvent but that was a state of affairs pre-dating the respondent's involvement with the company and not contributed to by him such that there was no evidence that his conduct was responsible for any loss to the creditors of Ballylea and in those circumstances, Mulcahy J declined to make a restriction order.

Directors' Fiduciary Duties

[Courtney, *The Law of Companies* (4th ed), Ch 16]

Company director – Duty to act in good faith and in what the director believes to be most likely to promote the success of the company – Standard of behaviour required of company director when director genuinely disagreeing with his fellow directors – Subjectivity of test – s 172(1) of the Companies Act 2006 (UK) – ***Saxon Woods Investments Limited and ors v Costa*** [2026] UKSC 21. The facts of this case were that the first plaintiff (Saxon Woods) was a shareholder holding over 22 per cent of the shares in a company called Spring Media Investments Ltd (the Company), of which the defendant was a director who also had an interest in the company through a Luxembourg company which held shares in the company. In 2016 the shareholders executed a new shareholders' agreement (SHA) under which it was agreed to work together in good faith towards the sale of the company or its shares not later than 31 December 2019. While the board of directors under the constitution was responsible for the management of the company, Costa was exclusively delegated the conduct of the sale process. The sale was not carried out because Costa believed a later sale would be likely to generate a better financial return for the company and the investors. At trial it was held that he had delayed the sale by a variety of means: ensuring no director, bar one, had any knowledge or involvement in the sale process, misleading the board by giving his fellow directors the impression the Company was fulfilling its obligations under the SHA although he knew this was not the case and by failing to disclose to the board that his instructions to the Company's advisors was to delay the exit beyond 2019. While he ultimately achieved this his plans for a profitable sale were sundered by the Covid-19 pandemic. Saxon Woods presented a minority shareholders' petition for unfair prejudice seeking an order that Costa be ordered to buy out its shares at the price they would have been worth on 31 December 2019. The trial judge found that the unfair prejudice claim had been made out but it was held that Costa had not breached his fiduciary duty under s 172 of the UK's Companies Act 2006. He ordered Costa to buy out the shares conditionally upon it being proved that had the plan been implemented a final offer of more than US$75 million net of debt would have been received by the Company. Both Saxon Woods and Costa appealed and the Court of Appeal ordered an unconditional buy out, it being found that Costa had in fact breached his fiduciary duty under s 172. The basis of this finding was that Costa's deception of the board had been dishonest according to the UK's test of dishonesty established in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67 and therefore he had not acted in good faith. It was also found that it was not open to Costa to formulate or act on his own judgment about a strategy for the success of the company since that had been conclusively determined by the SHA. Costa appealed to the Supreme Court.

It was held by the Supreme Court that the appeal by Costa should be dismissed. The Supreme Court reiterated the established rule that the court should not interfere with the exercise of the business judgment of directors in managing a company's affairs as enunciated by Lord Greene MR in *Re Smith and Fawcett Ltd* [1942] Ch 304 and that this applied to all exercises of discretionary powers. It was also noted that the duty of loyalty owed by directors was considered to be a 'subjective' duty and that the court will not interfere with the subjective view of directors which they actually and genuinely hold merely because it forms a different objective view of what was really in the best interests of the company. It was noted that this test not only applied to decisions of the board but also to decisions or acts of individual directors. The Supreme Court went on to hold however that it had never been suggested that a director was permitted to pursue his own judgment as to the best way forward for a company by a covert strategy concealed from his fellow directors to pursue an objective which directly conflicted with the business judgment and strategy already resolved upon by the board of directors as a whole. The Supreme Court held that it was implied from s 172 that there was a duty not to covertly subvert the management of a company's affairs by the board as a whole. It was also found that an individual director was required to bring his independent view of the way best to promote the success of the company to the attention of the other directors and he could not by covert conduct pursue some other strategy than that decided upon by the board.

An interesting argument made by Costa was that if a director genuinely believed that a certain course of action is best, then the director is free (and perhaps even obliged) to adopt any course of conduct he wishes to secure that the company takes that course, regardless whether objectively speaking his conduct involves lies, cheating, deception, dishonesty or disloyalty. The Supreme Court held it preferred the view put forward by Saxon Woods which was that the requirement for good faith extended not merely to the director's thinking but also to his conduct in the pursuit of achieving what he believes is the best course for the company; and that while the court will not second guess the director's genuine view about the best course for a company, the requirement for good faith does involve at least some objective element if the director's conduct is challenged in court. As to why it favoured the argument put forward by Saxon Woods, the Supreme Court held that despite it contradicting a rigorous application of grammatical rules, it was to be preferred because it was more consistent with a codification of the existing law which adopted an objective standard to determine the duty of loyalty, it better fitted the purpose of s 172; and finally because it was highly unlikely that the drafters of s 172 thought a director was required only to think (and not also to act) in good faith.

Company Meetings

[Courtney, *The Law of Companies* (4th ed), Ch 14]

Company meetings – General meetings of members – Application for an order of the court requiring a general meeting of a company to be called and conducted in a manner which the court thinks fit – Deadlock existing in a family-owned company – *s 179* of the Companies Act 2014 – *Re Old Kildimo Group Holdings Ltd and ors; Greene v Greene* [2026] IEHC 566. The background to this decision was that a recently divorced husband and wife each owned 50 per cent of the shares in the parent company of a group of companies. Due to their differences, the company was deadlocked and the applicant husband sought an order under s 179 of the Companies Act 2014 to call, convene and conduce a general meeting of each of the group companies to conduct the business ordinarily carried on at an AGM and also orders that he would be deemed to be a single-member quorum so that he alone could call, convene and conduct the general meetings. The background was that the applicant alleged that the respondent in her capacity as a director, member and company secretary had refused to attend a directors' meeting to approve and sign off the draft audited accounts or attend an AGM. One of the key arguments of the applicant was that an order could be made under s 179 in situations in which a company has two equal shareholders. The respondent contended that s 179 could only be used to allow the operation of majority rule at a meeting of shareholders of a company which was being frustrated by the tactics of a minority shareholder. Cregan J began by noting that there were a number of decisions where the Irish courts had granted or declined to grant orders under s 179 and its statutory predecessor, and in particular noted that the leading Irish case was *Re Decobake; Coyle v McHugh* [2022] IECA 31 where Murray J said (at para 81) that s 179 was 'merely a procedural section intended to enable company business which needs to be conducted at a general meeting to be so conducted'. Cregan J went on to consider the English case law on their similar provision: in Re Sticky Fingers Restaurant Ltd [1992] BCLC 84 it was noted that an order was granted but that in that case although the company was deadlocked at board level, the applicant held 66 per cent of the shares and the other shareholder held 34 per cent and Cregan J said he did not believe that the principle there applies in a company with two equal 50 per cent shareholders. Cregan J also noted the decision in Ross v Telford [1998] 1 BCLC 82 where there were two 50:50 shareholders and that it was held there that the similar UK provision (s 371 of the Companies Act 1985 (UK)) was found by the UK's Court of Appeal not to be an appropriate vehicle for resolving deadlock between two equal shareholders and that it was a procedural section that was not designed to affect substantive voting rights or to shift the balance of power between shareholders by permitting a 50 per cent shareholder to override the wishes of the other 50 per cent shareholder. After considering this decision Cregan J held 'I am of the view that section 179 is only applicable to cases in which there are majority and minority shareholders and an order can be made by a court under section 179 to allow a general meeting of the company to be called and conducted in any manner which the court thinks fit, to prevent a minority shareholder from using quorum tactics which prevent a majority shareholder from exercising their majority voting rights at a general meeting. 50. I am of the view that section 179 is not designed to tilt the balance of power between 50/50 shareholders in a case where they have agreed that power shall be shared equally and where a potential deadlock is something which must be taken to have been agreed on, with the consent of, and for the protection of, each of them in circumstances where they agreed to a 50/50 per cent shareholding and one position each as directors on the board.' After reviewing a number of other UK authorities, Cregan J held it was not appropriate to make an order under s 179 having concluded that the order would interfere with the respondent's substantive right to veto the approval of company accounts if of the view that they did not provide a true and accurate picture of the financial state of the company.