

Corporate Department

# Update: Director Restriction Orders

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## Update: Case note - Director Restriction Orders

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The recent case involving the directors of the insolvent but formerly “Michelin starred” Mint Restaurant shows that non-executive directors can be subject to restriction orders even where they are not involved on a day to day basis with the running of the company.

“Helpful Spouse” subject to restriction order

In the recent case of [Mint Restaurant Limited & Companies Acts: McCoy v Courtney & another \[2014\] IEHC 370](#) involving the high profile Dublin restaurant, Ms. Courtney, the wife of the executive director, was said to be merely a “helpful spouse” who agreed to be a passive director so as to satisfy the legal requirement that the company have two directors. However, the High Court imposed a restriction order.

The case was brought by the liquidator of the company pursuant to his obligation to do so in the absence of relief being granted by the Office of the Director of Corporate Enforcement (ODCE). He sought restriction orders against both of the directors on a number of grounds including the failure by the company to discharge tax liabilities, failure to maintain company books and records and the use by a director of a company credit card to make non-business related purchases.

In his grounding affidavit, the liquidator also identified a number of mitigating factors that he felt merited the consideration of the Court in reaching its conclusion.

The Court held that certain of the actions of Mr Courtney, whilst unwise and reproachable, did not amount to irresponsibility. Emphasis was placed on the professional opinion of the liquidator in that regard, particularly that those actions had not adversely affected the position of the creditors of the company. A restriction order was not, therefore, made against Mr Courtney.

The Court found, however, that the use of a company credit card by Ms Courtney for non-business related purposes without explanation amounted to irresponsibility on her part. Despite being a non-executive director, Ms Courtney directly involved herself in the Company's operations by holding and using the company credit card and a restriction order was made against her as a result. Indeed the Judge noted that *“a company, however small, is not the private purse of its directors”*.

### Restriction orders (Companies Act 1990, Section 150)

Restriction orders are imposed by the Court on directors of insolvent companies who have failed to show that they acted honestly and responsibly in relation to the conduct of the affairs of the Company. A restriction order prevents a restricted director from becoming involved in any company for a period of 5 years unless it has been capitalised with at least €63,486.90, in the context of a private company, and €317,434.52 in the context of a public company.

A liquidator of an insolvent company is obliged to bring restriction proceedings against directors unless he or she has been relieved of that duty by the ODCE. Furthermore, the Court is obliged to impose a restriction order unless the director is able to show that he or she has acted honestly and responsibly and there is no other reason why it would be just and equitable to impose the restriction. Restricted directors' names are entered on a searchable register maintained by the Companies Registration Office.

## Conclusion

The evidence of the liquidator, that Ms Courtney appeared to be a non-executive director, did not relieve her of her duties as a director, and specifically in this instance, the duty not to use company funds for her own private use. The Mint Restaurant case emphasises the importance of non-executive directors being mindful of their duties. All directors, whether executive or non-executive, must be in a position to demonstrate that they have acted honestly and responsibly to defend against the imposition of a restriction order.

This case also highlights the weight which will be given by the Court to the opinions formed by the liquidator of a company in the course of his investigations.

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