CLIENT GUIDE

Directors' Duties

OVERVIEW

This note is designed as a brief overview of the general statutory duties of UK directors. It is vital to understand these duties fully if you are to be appointed as a director of a UK company. This note covers the duties of a director of a private company and it should be noted that a director of a public limited company would be subject to additional requirements.

THE ROLE OF DIRECTORS

Directors are responsible for the day-to-day management of a company, and in doing so may exercise all of the powers of the company. In running the company directors must adhere to the provisions of the Companies Act 2006, which sets out the statutory duties of directors. A director should always also consider the company's articles of association, any relevant agreements and the terms of their appointment.

COMPANIES ACT 2006 - DUTIES OF DIRECTORS

Duty to act within powers

- Directors must only exercise powers in accordance with the terms for which they were granted and for a "proper purpose"
- Directors should be aware of the terms of the company's articles and the powers in its constitution
- Board meetings should be subject to formal proceedings and directors should ensure that proper process is followed

Duty to act in a way the director considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole

- In doing so, the director must have regard to, amongst other things:
  - The likely consequences of any decision in the long term;
  - The interests of employees;
  - The need to foster business relationships with suppliers, customers and others;
  - The impact of the company's operations on the community and the environment;
  - The desirability of maintaining a reputation for high standards of business conduct; and
  - The need to act fairly as between members.

Duty to exercise independent judgement

- Directors should not fetter their discretion unless properly authorised to do so
- This duty will not be infringed by a director acting in accordance with a previous board decision or in a way that is authorised by the company's constitution
- Directors should not allow personal interest to affect their judgement

Duty to exercise reasonable care, skill and diligence

- This is an objective test and will depend on a director's own skill and experience. Directors with additional or specialist knowledge in one area will be held to a higher standard in that area
- A director is entitled to rely on qualified professional advice where appropriate and can rely on other officers of the company

Duty to avoid conflicts of interest

- Directors must avoid situations in which they have or may have a direct or indirect or possible conflict with the company. This does not apply to a transaction with the company that the director is interested in, which is covered below
- This applies in particular to the exploitation of any property, information or opportunity
- Conflicts can be authorised by the directors who are not interested in the transaction, although the power to authorise such conflicts may require shareholder approval

Duty not to accept benefits from third parties

- Directors must not exploit their position for personal gain
- This duty is not infringed if accepting the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest
- The receipt of a benefit in breach of this duty can only authorised by the company's shareholders.
- Duty to declare interest in a proposed transaction or arrangement with the company
- Directors are required to declare to the other directors the nature and extent of any interest, direct or indirect, in a proposed transaction or arrangement with the company.
- This declaration must be made before the transaction is entered into and can be made at a board meeting.

Other important considerations

Generally the directors owe these duties to the company however there are exceptions, such as when the company is insolvent or approaching insolvency. In this situation the directors are under a duty to consider the interest of creditors, rather than shareholders, first. A director of an insolvent or a near-insolvent company may, in some situations such as wrongful or fraudulent trading, be personally liable for the debts of the company.

If a director is appointed as director to a number of group companies the director owes the duty to each company individually. Similarly, if a director is appointed by an investor that director still owes the duties to the company, which must be separated from the terms of his appointment by any investor.

FURTHER INFORMATION

We hope that this provides you with a helpful summary of the position. This guide is not legal advice, but should you require any further advice or assistance, please do not hesitate to contact us.