

Companies Act 2006 – Directors Duties



The Companies Act 2006 received Royal Assent on 8th November 2006. At over 700 pages it is the longest ever Act to be passed through Parliament. The Act aims to simplify and codify the law in relation to companies. It implements changes to all areas of company law from shareholders rights to secretarial and administration issues.

However, one of the most significant and controversial proposals of the new Companies Act 2006 is the codification of directors duties. The Act introduces a statutory statement of duties which will replace many existing common law rules. The codified duties will apply to all directors of a company, including shadow directors and in some cases even former directors.

The statutory statement introduces seven general duties:

- Duty to act within powers.
- Duty to promote the success of the company for the members' benefit.
- Duty to exercise independent judgement.
- Duty to exercise reasonable care, skill and diligence.

- Duty to declare interests in proposed transactions or arrangements with the company.
- Duty to avoid conflicts of interest.
- Duty not to accept benefits from third parties.

Five of these duties come into force on 1st October 2007, but the duty to avoid conflicts of interest and duty not to accept benefits from third parties will not be implemented until 1st October 2008. These duties currently exist under the common law; the Act simply puts them together for the sake of simplicity and ease for directors and shareholders.

The Act also introduces the so-called concept of “enlightened shareholder value” into the duty to promote the success of the company. This concept requires directors to have regard to a statutory list of matters when fulfilling their duties. These include consideration of the likely consequences of any decision in the long term and how it may affect the interests of a company’s employees. It is still unclear as to how this requirement will work and there is uncertainty surrounding the new concept of “success”. There may be particular concerns for directors in a takeover situation in trying to balance the long term interests of the company and the interests of their employees with their duty to consider whether the bid is in the best interests of the shareholders. Until there is case law in relation to the new duties, directors will be left with some uncertainty as to how the courts will interpret the new Act.

The Act also introduces some significant changes to the appointment of directors, including:

- A new requirement that companies must have at least one director who is a natural person and not a corporate body.
- A minimum age of 16 years for directors of all companies
- The option to file a director’s service address on the public records rather than a residential address

These three provisions will come into force on 1st October 2008. Also, the 70 year age limit for directors of public companies and their subsidiaries was repealed from the 6th April 2007.

Changes are also introduced which affect director’s service contracts

and director's loans. The prohibition on loans and quasi-loans to directors is being abolished and will be replaced with a requirement for shareholder approval. Also, shareholder approval is now required for all directors' service contracts in excess of two years, instead of the previous five. These provisions come into force on 1st October 2007 as do the new provisions reforming the law on substantial property transactions and also amending the law on directors' liabilities. The general theme coming through the 2006 Act is shareholder empowerment.

The Companies Act 2006 sought to codify, simplify and modernise the law on companies. Whether or not the area of directors duties has benefited from this codification only time will tell.

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