

**BULLETIN**

**COMPANIES ACT 2006**

**New Rules on Directors Duties and Shareholders Actions**

New rules are now in force expanding the duties of Directors of English Private and Public Limited Companies and giving minority Shareholders greater rights to protect their interests.

The Companies Act 2006 (“the Act”) was passed on 8<sup>th</sup> November 2006. The provisions of the Act have been put into force piecemeal but those dealing with certain directors’ duties came into force on 1<sup>st</sup> October 2007.

**In Force 1st October 2007**

- To act in accordance with the company’s constitution and to exercise their powers for the purposes for which they are conferred.
- To act in good faith for the benefit of the shareholders as a whole.
- To take reasonable care, skill and diligence.

**In Force 1<sup>st</sup> October 2008**

- To avoid conflicts of interest.
- Not to accept gifts from third parties.
- To disclose an interest in a proposed transaction or arrangement with the company.

So what does it mean that directors must act in good faith for the benefit of shareholders as a whole? Directors must consider:-

- The likely consequences of any decision in the long-term.
- The interests of the company’s employees.
- Company’s relationships with suppliers and customers.
- The environment.
- Fairness in dealings between shareholders.

Companies ultimately need to consider profitability and this means that there is little change in the purpose and practical implications of the Act.

Larger companies will already be considering the environment but again it is worth bearing in mind that profits and the interests of shareholders come above other issues.

Companies will need to consider matters such as the environment in Board Meetings and clearly this will need to be recorded to show that the issue has been considered.

In short, smaller companies will be hit harder as they will have to absorb the costs of compliance.

## **Problems With The New Law**

Only companies can enforce a director's duties. There is a difficulty where minority shareholders seek to enforce director's duties.

## **The Existing Law**

This limits the circumstances when minority shareholders may take action. Individual shareholders acting on behalf of the company can only take action where:-

- Acts complained of amount to fraud on the minority and the wrongdoers were in control of the company.
- The act could not be ratified by ordinary resolution.
- The act was outside the company's objects.

This rule is restrictive and minority shareholders cannot easily question the directors on how the company is run.

## **The New Law**

Claims may now be brought for the following failure by directors to comply with the new duties brought in under the Act.

There is some concern that any third party will be available to change Board decisions.

There is one important safeguard here and that is that court permission is required before any derivative action is brought.

This is important as a shareholder holding just one share may bring an action as may one who has only bought that share since the act complained of.

The Court will consider whether a person acting in accordance with the duty to promote the success of the company. Ultimately, this means of course that the Court cannot overlook that the duty to promote the success of the company means long-term financial well being.

The Court will consider whether the shareholder is bringing the action in good faith and whether the act that is the subject of the action will in the future be authorised by the company's shareholders.

The initial hurdle should mean that the environmental or political activist should fail.

## **Avoidance**

Companies should ensure that they keep shareholders updated on decisions taken, particularly those of a controversial nature. Obviously, if shareholders are consulted beforehand then this type of action can be avoided.

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