

2nd October 2007

New Director's Duties could expose directors to further liabilities claims Averta partner

The part of the Companies Act 2006 dealing with director's duties came into effect on Monday 1st October 2007. This means that for the first time, directors duties have been listed and codified. And according to Averta Employment Lawyers' Alan Jones, there are concerns that the law will expose directors to greater potential liability and create additional bureaucracy at board level.

Alan Jones, partner at [Averta Employment Lawyers|<http://www.averta.com/>], the Midlands firm that specialises in acting for directors and senior executives across the UK says:

“As a breach of duties can bring substantial claims against individuals, all directors would be well advised to seek independent legal advice on the risks they take in holding office in a company. One only has to remember the action that the directors of Equitable Life faced in recent years, to realise how seriously directors should take complying with their duties.”

However the Act may also help with clarity: Jones continues:

“This is the first time that director's duties have been set out in writing. Previously the duties and obligations on directors had been implied or established by custom and practice over many years, but never actually written down.”

“The new statement of duties is not exhaustive but, for the first time, it brings clarity and certainty to the position of a director and the responsibilities owed to the company.”

These duties are many and varied and include the duty to “promote the success of the company”, to exercise “reasonable care skill and diligence”, to “avoid conflicts of interest” and not to “accept benefits from third parties”.

According to Jones there are criticisms of the new law:

“As with most legislation, it is not without potential difficulties. There are concerns that the law will create additional bureaucracy at board level or expose directors to greater potential liability. It is possible that board minutes will have to be much more detailed to show that directors have contemplated a lengthy catalogue of factors in exercising his or her duty to promote the success of the company. There is little guidance in the Act as to the emphasis that a director should give to a particular duty, or how “success” will be measured. Although a director’s duties are now listed, it is likely that they will sit alongside the existing common law duties (which have not been repealed by the legislation) and much of the case law that has developed over the years will be used to interpret the meaning of the new duties and obligations.”

As always, this is a fertile ground for lawyers and a further potential headache for companies in managing the business.

Averta, which was set up just over three years ago, now comprises two partners, two senior associates and two consultants. Market analysts report in Chamber’s UK guide to legal firms that Averta has: “cornered the region’s market when it comes to advising senior executives” and that client’s benefit from their “vast experience”.

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Note to editors:

Issues that Averta Employment Lawyers will handle include, negotiating severance terms, advising on boardroom disputes, compromise agreements, contractual problems, drafting service agreements, consultancy agreements, restrictive covenants, notice and garden leave, unfair dismissal, whistle blowing and discrimination issues.

Averta focuses primarily on the needs of senior executives and professionals.