

Briefing Note

Duties of Directors of Jersey Companies

Europlan Financial Services Limited, International House, 41, The Parade, St Helier, Jersey JE2 3QQ
Tel +44 1534 505800 Fax +44 1534 505805 E-mail admin@europlantrust.com www.europlantrust.com

Introduction

It may be helpful, especially under the current economic climate, to provide a brief guide to the duties of a director of a Jersey company. This may provide a salient reminder for those already familiar to the legal obligations imposed upon the office of director or as a brief overview for those new to the role.

The role of 'director' and the duties imposed upon those undertaking the role are largely set out in the Companies (Jersey) Law 1991 (the "Companies Law"). The term is defined to include alternate directors, shadow directors and de facto directors and any person acting in the capacity of director, whether or not formally appointed.

Fiduciary Obligations

The starting point for the duties of a director are the fiduciary obligations imposed by Article 74(1) of the Companies Law. Under this Article, a director of a Jersey company must:

act honestly and in good faith with a view to the best interests of the company; and
exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

It should be noted that there is a considerable body of common law by which these duties are analysed and expanded but it is beyond the scope of this briefing note to consider all of this case law. One important point however is that these fiduciary obligations are extended in times of the company's insolvency such that the directors must also have regard to the best interests of the creditors.

Directors are also required to display the same level of care, diligence and skill as a reasonably competent member of their profession. They are not, however, required to be experts, or to be liable for errors in judgement. A director may also rely upon his co-directors and other officers of the company.

Disclosure of Director's Interests

Articles 74A and 75 of the Companies Law relate to the disclosure of director's interests and restrict the position under English statute under which the company may waive rules protecting its interest in transactions and dealings where directors also have an interest. Article 75 requires that a director disclose any material interest in a transaction which may conflict with the interest of the company. The company's Articles of Association often contain further specifications as to how conflicts of interest are to be dealt with. It may be that the directors involved may have to abstain from voting on the relevant transaction but the restrictions imposed by the Articles of Association can vary from company to company.

Insolvency

Where a company becomes insolvent, there are further duties that attach to the directors of that company including the duty to avoid wrongful trading and fraudulent trading.

Ratification of breaches of duty

Article 74(2) of the Companies Law allows all of the shareholders to ratify or authorise any breach of these obligations provided that the company may settle its liabilities as they fall due immediately following the breach. Thus, no breach may be ratified if the company is, or will be, insolvent following the breach. Article 212 of the Companies Law also allows the Court to absolve a director from liability for breach of his duties under certain restricted circumstances.

Conclusion

This briefing note provides only a brief look at the duties of directors of a Jersey company. If you have further questions or if you wish to discuss how Europlan can assist with the provision of directors and on-going administration of a Jersey company, please do not hesitate to contact in the first instance Angela Snell at the offices detailed above.

This briefing note is intended for the use of clients of the Europlan group of companies as a brief guide in relation to Duties of Directors of Jersey Companies. It is not to be considered as professional advice. We recommend that professional legal and tax advice should always be sought.

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