

THE EU TRANSPARENCY DIRECTIVE: BE FOREWARNED!

**A review of the current law and proposed
changes to the legal framework governing
UK director's duties and liabilities**

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DIRECTORS DUTIES & LIABILITIES: AN INSURANCE SOLUTION

*As a Director or Officer of a
Company duties and liabilities
often become lost in the mix...
you need to ask some
fundamental questions...*

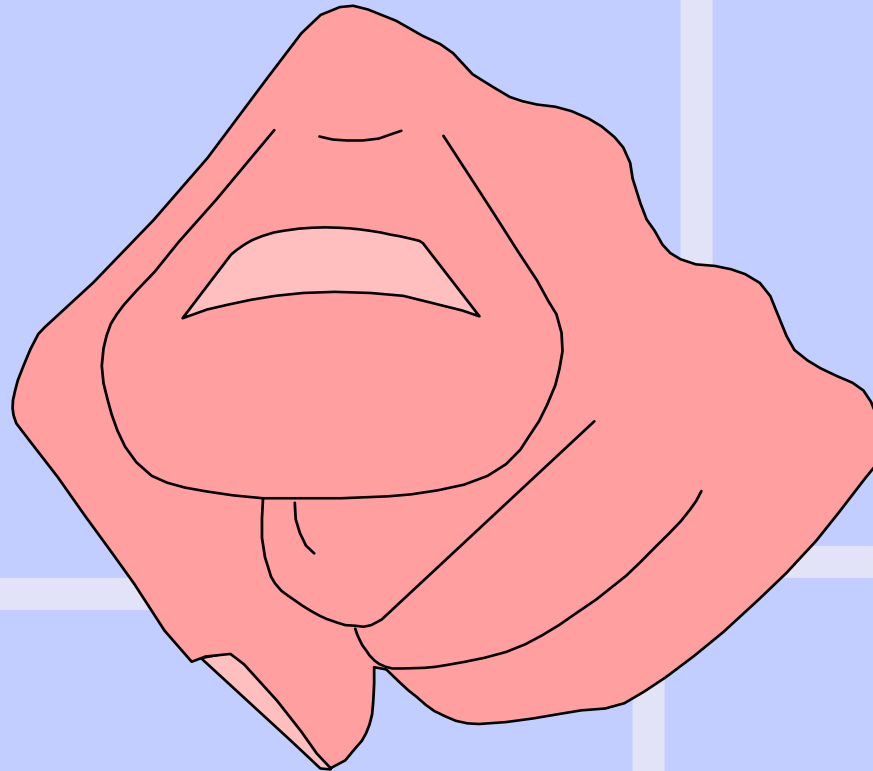
They are:

DIRECTORS DUTIES & LIABILITIES: AN INSURANCE SOLUTION

- ☞ Can a company defend the legal suit against a Director or Officer?**
- ☞ Can a company advance defence costs and expenses to defend the suit?**

DIRECTORS DUTIES & LIABILITIES

- ❧ **Can the Director or Officer contract with the company on the basis that they would defend the Director or Officer in the event a suit is taken against him as a Director or Officer of the company?**
- ❧ **Can the Director or Officer contract with the company on the basis that the company would indemnify the Director or Officer in the event that damages are paid out by the Director or Officer?**



No, you are on your own.

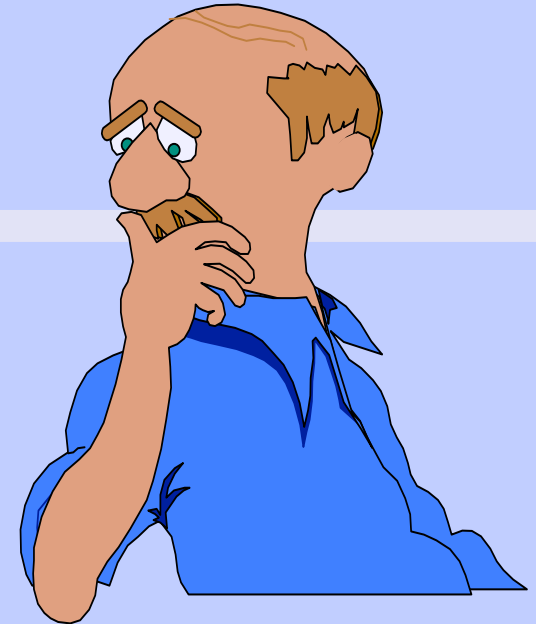
DIRECTORS DUTIES & LIABILITIES

THE FACTS

You are on your own if a negligence suit is taken against you in your capacity as a Director or Officer of your Company.

A lot of people think that their Company would defend them if such an action was brought.

The truth is that it *cannot*, even if the company wanted to.



SECTION 310 OF THE COMPANIES ACT 1985

Section 310:

“(1) This Section applies to any provision.... Indemnifying [a company officer] against any liability which, by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company... (2) Any such provision is void.”

SECTION 310 OF THE COMPANIES ACT 1985

The harshness of Section 310(1) is mitigated by other provisions:-

Section 310(3):

It provides that a company may indemnify its Directors or Officers against any civil liability incurred in defending any proceedings “in which judgment is given in his favour or he is acquitted”.

SECTION 310 OF THE COMPANIES ACT 1985

Section 310 (3) :

Also allows a Director or Officer to seek from the court to be relieved from liability, in cases of in accordance with Section 727 of the Act. Relief will be granted in circumstances where the individual acted “honestly and reasonably and, having regard to all the circumstances of the case, ought to be excused...”

THE DEFINITIONS

Director

- ◆ **Nominee directors;**
- ◆ **Non-executive directors;**
- ◆ **Alternate directors;**
- ◆ **‘De facto’ directors;**
- ◆ **Shadow directors.**

Officer

- ◆ **director, secretary or employee;**
- ◆ **a receiver and manager appointed under an instrument;**
- ◆ **a liquidator appointed in a voluntary winding up .**

DUTIES OF A DIRECTOR **AND OTHER OFFICERS**

1. Fiduciary Duties;

2. Duty to exercise due skill and care;

3. Statutory Duties:-

Companies Act 1985

Environmental Protection Act 1985

Insolvency Act 1986

4. The Combined Code;

5. The ABI Guidelines.

PROPOSED EXTENSIONS TO THOSE DUTIES

- 1) The EU Transparency Directive**
 - (a) The mixed approach to financial reports**
 - (b) Annual Reports**
 - (c) Issuers of Debt Securities**
 - (d) Disclosure: substantial shareholdings**
 - (e) Dissemination**
 - (f) Languages**

PROPOSED EXTENSIONS TO THOSE DUTIES

- 2) Sarbanes Oxley (US)**
 - (a) Transparent and rapid financial disclosure**
 - (b) Corporate response in the US**
 - (c) New trends in US corporate governance**
 - (d) The lawyer's role**

PROPOSED EXTENSIONS TO THOSE DUTIES

3) Corporate Killings Laws

(a) Why Reform?

(b) Development of Proposals

(c) Criticisms

(d) Anticipated developments

PROPOSED EXTENSIONS TO THOSE DUTIES

- 4) Government White Paper
“Company Law Review” (CLR)**
 - (a) What is the CLR proposing?**
 - (b) Non-executive directors**
 - (c) Extending the duty of care**
 - (d) Possible reform options (A,B&C)**