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Directors' Duties In English Corporate Law

Курманова Мадина Садуакасовна

Студент (магистр)

Московский государственный университет имени М.В.Ломоносова, Юридический факультет, Москва, Россия

E-mail: mkvisor@gmail.com

A company director often deals with some property of other people. Shareholders invest their money into the company, and the director is in charge of the company's property. Thus, shareholders are to lose their investment if the company becomes insolvent. It is necessary to control the behaviour of directors, and to impose upon them a standard of conduct to protect the investors.

There are three major difficulties in imposing such a standard:

First of all, directors' involvement in company activities may vary. There are 'executive' and 'non-executive' members of a board of directors. The executive directors are very closely involved in daily activities, whereas non-executive members take an overall view and make policy decisions.

Secondly, there are also different types of companies. They vary from huge multinational enterprises to small family businesses. Larger and complex business employs highly qualified and experienced directors.

Thirdly, one should consider the nature of the director decisions. Directors mostly decide which contracts are the best for the company. Business decisions are often risky. A court doesn't judge economic expediency of director's decisions.

The list of fundamental duties appears in sections 171-177 of the Companies Act 2006, which grows out of the case law. It includes a list of situations where a director is most likely to be in breach of his fundamental duty.

1. First of the duties is the duty to act within powers. A director of a company must to act in accordance with the company's charter, and only exercise powers for the purposes for which they are conferred. Certain powers of the directors are given them for a particular purpose. If the directors use them to achieve a different objective, the court will prevent this, if it is requested to do so.

2. One of fundamental duties is duty to promote the success of the company. The directors must act bona fide for the benefit of the company and must consider interests of various stakeholders including shareholders, employees, suppliers, and customers.

3. Duty to exercise independent judgment is statutory of the common law, which prevents a director from 'fettering his discretion'. This is probably another way in which directors may have a conflict of interests. If they bind themselves by an agreement to act in a particular way, they have a personal interest in fulfilling that engagement. This is in conflict with their duty to always act in the best interests of the company.

4. Duty to exercise reasonable care, skill and diligence requires acting towards others and the public with reasonable attention and prudence. In common law judges set out three important rules:

(1) The standard is not a 'reasonable professional director'. A director needs to perform his duties with reasonable knowledge and experience.

(2) The standard varies with different types of directors. Full-time salaried director of a large company gives all his working time to the affairs of the company. A non-executive director is not bound to give continuous attention to the affairs of his company. His duties include performance at periodical board meetings and at meetings of any committee of the board.

(3) Directors can pass their duties to some other officials. If there is no suspicion, director can be justified in trusting that official to perform such duties honestly.

5. By the duty to avoid conflicts of interest the director of a company must avoid a situation in which he has a direct or indirect interest that conflicts with the interest of the company.

6. Duty not to accept benefits from third parties. This duty is aimed primarily at bribes and secret commissions. Companies should check that arrangements for remunerating directors do not breach this duty.

7. Duty to declare interest in proposed transaction or arrangement. The Companies Act 2006 requires a director to declare to his/her fellow directors the nature and extent of any interest in any proposed or existing transaction or arrangement involving the company.

The breach of any of these fiduciary duties is a reason for director's personal liability. If a director has profited from the breach he will be obliged to pay the company any money that he has made because of the breach.

Источники и литература

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