

NEWSLETTER

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This newsletter covers the topic of directors duties and liabilities in **Singapore**.

Introduction

The law relating to a director's liabilities are to be found within both the Singapore Companies Act as well as case law created from time-to-time by the local courts.

Unlike in other jurisdictions, Singapore applies its framework on a 'one size fits all' basis which means the rules apply equally to executive, non-executive, shadow and nominee directors alike.

As a result, it is therefore important for an individual who is contemplating becoming a director of a Singapore incorporated company to understand – even if they are not anticipating to make day-to-day business decisions for a local company – to appreciate and understand the law relating to their duties and liabilities in Singapore.

The key concept which encompasses the various duties and liabilities placed upon directors is the undivided loyalty a director owes to his/her company. In other words, all actions and decisions that are taken by a director must be made in the best interests of their company.

A. Key Responsibilities under legislation

Under the Companies Act, every director must act with honesty and reasonable diligence in the performance of his or her duties.

The level of competence, honesty and diligence expected of a director is measured based on what a reasonable person who typically conducts the type of business within the industry the company is operating in would be expected to achieve.

We recommend a director to make an evaluation as to whether his/her skill set and competencies match the role in which they are assigned.

In addition, a director is also required by law to not use any information which he or she acquired in his or her role as director in a way which is detrimental to the company.

By way of example, if a director acquires knowledge concerning a potentially lucrative contract which the company could take advantage of, he or she is required to ensure this was brought to the company's attention for it to have the opportunity to decide whether to enter into the contract.

A director who is in breach of the above duties is required to repay the company the profit or loss based by his or her act as and can face a fine of up to USD 3,800.00 and/or up to twelve (12) months imprisonment.

B. Responsibilities under the common law

Singapore's legal system was originally established and has continued to be maintained under the common law legal system originating from England and Wales.

In keeping with tradition, the Singapore courts continue to apply key principles built up over time and these cover the following areas of a director's role:

1. Conflicts of interests with the company

Since a director owes complete loyalty to the company in which he or she acts the law requires a director to disclose details of any actual or potential conflict which may arise whilst he or she is sitting on the company's board.

A typical example would be where company A, in which an individual acts as a director is in the process of contracting with company B, in which the same director has an interest. Clearly in this scenario the director is unlikely to be able to act impartially and this is why it is important for a director to avoid situations of this kind arising in the first place.

2. Acting in the best interests of the company

This is a general duty imposed by the courts and is wide in nature. This means that a director must have the interests of the company firmly in his or her mind when he or she makes any decision or takes any action for and on behalf of the company.

Interestingly, the courts will not seek to reassess the situation and decide 'what they would have done' in a similar situation. Instead, the courts will seek to assess whether the director concerned truly believed he or she genuinely acted in what they believed to be the best interests of the company. This is a more flexible standard and should be welcomed by directors acting in Singapore.

3. To use powers only for their proper purpose

Even if a director can satisfy a court that his or her actions were what he or she believed were in the best interests of the company, the courts have also invented a rule whereby certain powers which are vested in the directors should only be used for the purposes in which they were created.

Where a director is in breach of any of the above duties a court may order damages to be paid to the company and/or for him or her to be disqualified for a period to act as a director for any Singapore incorporated company.

C. Other responsibilities

Apart from the above broadly framed duties and liabilities, there is a residual *pot-pourri* of miscellaneous duties placed upon a Director and these include:-

1. A duty to keep proper accounting records for the company;
2. A duty to hold annual general meetings for the shareholders of the company;
3. A duty to file annual returns with the registrar of companies; and
4. To prepare and record true and accurate minutes of board/shareholder meetings.

Although these above duties may appear administrative in nature, the Singapore courts enforce these duties strictly. By way of example, an errant director who failed to adhere to the above duties was fined a total of **USD 85,000.00** for his failure to ensure his companies held their annual general meetings.

Conclusion

Under Singapore law, directors are obligated to carry out their duties in an honest and diligent manner. All actions and decisions taken by directors must be made with the best interests of their company in mind.

The law takes a broad-brush approach to imposing responsibilities on directors of all kinds (even shadow, non-executive and nominee directors are subject to the full array of duties).

Foreign based directors who intend to join the board of a Singapore company would be well advised to gain familiarity with their role and concomitant responsibilities as highlighted above and, from June 1st, 2018, the Accounting and Regulatory Authority of Singapore have created a formal training program for newly-appointed Singapore company directors so they may carry out their role in accordance with their duties.

CONTACT

For specific advice or further information on the topics covered, please feel free to contact **Caroline Berube** (Tel: +65 6755 9019 or email: cberube@hjmasialaw.com).