

## **COMPANY DIRECTORS PERSONAL LIABILITY**

We live now in interesting times. In the past many businessmen who wanted to provide jobs for themselves in their retirement (jobs for the Boys) sought appointments to boards of directors where they would earn attractive rates of director's fees for doing not much. They made decisions based on reports of their company executives, the workers carried out the tasks involved to put those decisions into effect and many board members, especially in public companies, were not involved in the day to day running of the company. However they were always there to collect their director's fees.

When the 1993 Companies Act was past it imposed duties and rules on directors which had not been there in the past. Company directors have a duty to act in good faith and in the best interests of the company. They must exercise their powers for a proper purpose and are required to comply with the Companies Act and the Company's Constitution. There are penalties for reckless trading by the company and the company's directors have a duty of care when exercising the powers or performing their duties as directors.

The liability of company directors is unlimited and as a consequence may be found personally liable for any negligent actions performed by them. The furore over the failure of the Feltex Company is not yet over and we may still see the directors of that company face an unenviable outcome of some further Court proceedings which are pending.

The current recession has also increased the public's expectation of company directors and the Courts have been active in finding personal liability where directors have not performed their duties as they should. In 2005 the High Court imposed damages of \$8.4 million on a director of a shipping company. The board of the company had carried out expansion operations while it was insolvent and as such was an illegal business risk. In those circumstances it would have been essential for the company to stop trading. The director's decision to extend the company meant that they were aware that the company was operating when it was insolvent, the decision was reckless in the circumstances and the principal director was held personally liable.

There are many decisions coming from the Courts now which reflect the judicial attitude to companies doing what they should not. While a company itself, and its shareholders, have limited liability, directors don't. If you are asked to be a director of a company it is absolutely essential that you are vigilant about the company's activities and decisions made the board. It is always advisable to make enquiries about a company before accepting an appointment as a director.

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