

Rights and Duties of Directors



Tenth Edition

Martha Bruce FCIS

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by

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Preface

The last year has seen continued change and development in the whole area of directors' rights, duties and responsibilities. Many reviews, reports and draft bills long in planning and drafting have finally come to fruition, as have many others largely borne out of the recent banking crisis.

Most notably the phased implementation of the Companies Act 2006 is now complete. Directors are becoming familiar with the many changes introduced and have started to review and amend established policies and procedures to accommodate the new requirements. Whilst the Companies Act 2006 is largely deregulatory for private companies, which may have important implications for the way they are managed, some sections impose greater responsibilities on directors and their companies. For example the requirement to include a business review and separate corporate governance statement in the company's annual accounts and changes such as these have been included in this 10th edition.

The statutory statement of general duties owed by directors to the companies to which they are appointed is now in full force and effect and most would agree that it does provide greater clarity about what is required of directors and makes the law more accessible and easier for directors to understand. Information about the statement of general duties, the seven new statutory requirements and the practical implications is included in Chapter 4, for example the need for directors to disclose and, where appropriate, for the company to formally approve any conflicts of interest.

There are, in addition, numerous other changes that have and will be coming into effect shortly including revised corporate governance requirements as a result of the Walker Report and the FRC's review of the Combined Code (now revised and re-named the 'UK Corporate Governance Code'); introduction of the directors' service address regime; developments in employment law such as the Equality Act 2006, the Equality Act 2010 (which received Royal Assent on 8 April 2010 but is not yet in force); publication of the ACAS disciplinary and grievance code; updated guidance on how directors should seek to lead their companies on health and safety; and changes to take-over and merger provisions to name but a few. These changes have been incorporated into this 10th edition, as it is extremely important that directors are kept fully up-to-date at all times whilst holding office.

As a result of concern about excessive risk taking and failures in internal control processes, reporting and corporate governance, widely attributed as the cause of the recent banking crisis, there has been considerable focus over the past year on the behaviour and practices of boards; the need for directors to receive induction and on-going training; and for their performance to be formally assessed. These areas have been expanded to include current recommendations.

Preface

Directors will recognise that their statutory duties are inescapable and they can no longer shelter behind their companies or claim ignorance or a lack of understanding of their responsibilities in their defence. From the day they are appointed, they need to fully understand their rights and the duties required of them which, as well as widely recognised financial duties, now extend to encompass many social, environmental and ethical issues as well as those more directly related to requirements of the Companies Acts and closely associated legislation. To demonstrate this, updated cases and statistics have also been included on directors' disqualification and personal liability, unfair dismissal, corporate manslaughter and health and safety incidents, and increased penalties for data protection breaches, etc.

Rights and Duties of Directors has been written as a practical guide for directors from whatever background to help them understand the full range of their duties embodied in common law, an extensive range of legislation and, for listed public companies, requirements of the UK Listing Authority and the principles of good corporate governance. Whilst it is not possible to cover all of these areas in detail, the book aims to provide directors with essential knowledge and practical advice, enabling them to refer elsewhere for more detail if required.

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June 2010

About the author

Martha Bruce FCIS is a qualified chartered secretary and director of David Venus & Company Limited, a leading firm of chartered secretaries providing company secretarial advice and services to both private and public companies. She acts as director and secretary to a number of companies and consultant to many others, and applies her wider experience of company law and commercial practice in managing their day-to-day administration as well as undertaking specialist projects and assignments for them where detailed technical knowledge is required. She also deals with trade mark registrations and has a wide portfolio of clients for whom she registers and administers trade marks.

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