Responsibilities of Officers of a Limited Liability Company

Editor | ROBERT ATTARD

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"Company, villainous company, hath been the spoil of me."

From King Henry IV Part I
Act III Scene III
William Shakespeare

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Notes from a regulatory and compliance perspective: a fresh look at the responsibilities of company directors and officials

Preliminary and scope

The brief paper reflects on the position of company directors and other officials of companies which have obtained an authorization under legislation which govern the provision of financial services in Malta. This area of economic and professional activity ranks among the most extensively regulated sectors in our legislation. This heightened level of regulation tries to ensure that persons and companies operating in the sector are fit and proper and that their activities would not prejudice or harm the public.

The authorization phenomenon gives rise to a special relationship whereby the company secures the possibility to offer designated services and in return accepts to have its activities, structures and conduct subjected to the additional scrutiny of a public licensing and supervisory agency. This relationship gives rise to higher expectations of disclosure, honesty, reliability, accountability and proper internal controls and management practices. Licenses and authorizations are always voluntarily applied for and applicants are, or should be, aware that the official authorization to provide licensable services to the public raises the level of competence and good practice expected and required from them. This higher standard flows from the licensing relationship and is voluntarily assumed once an applicant enters the licensing relationship whereby a company obtains the privilege from the State or its representative agency to engage and offer services in selected exclusive areas of activity which may affect the public trust, as in financial services.

This type of legislation adds a regulatory dimension to directors' duties and responsibilities. Nevertheless, whenever one is examining company directors' responsibilities, one can never escape the fundamental importance of the Companies Act . One of the objectives of the 1995 Act was indeed to develop new and more effective rules regarding the duties and standards of performance expected from company directors and other officials, a subject on which only a few patchy provisions in the former Commercial

Partnerships Ordinance previously existed. The Ordinance may have been Malta's first modern company legislation but it contained only one provision which addressed the general role played by company directors. This was article 121 which stated that the "business of a company shall be managed by one or more directors". Article 126 then proceeded to warn directors not to set themselves up in competition against their own company. By the early 1990's, the situation clearly had become unsatisfactory especially when plans were being drawn up to develop the financial services sector.

In 1995 Malta adopted a new Companies Act. As the date itself indicates, Maltese company law was reformed in time to serve as a suitable, credible and effective platform on which to construct the government's declared objective to establish the island as a location for financial services operations. This objective saw the adoption of new legislation on banking, investment services, prevention of money-laundering and insider dealing. Adequate regulation of directors' responsibilities formed an indispensable element of this ambitious objective which could not sensibly be based on the very basic 1962 Ordinance framework. For this reason, a historical link may be traced since 1995 between the development of company law in Malta and the growth of the financial services industry and legal framework. Indeed, since 1997, the Companies Act has been administered as an integral part of the functions of the Malta Financial Services Authority and the Registry is housed within the Authority's premises.

Company law and general governance duties

The first part of this brief paper addresses some general governance issues and specifically the duties and responsibilities of directors in our company legislation. Its purpose is to set the scene for the second part which shall reflect more specifically on the status and role of compliance officers in regulated entities and their relations with the regulatory agencies.

Much has been written and shall without doubt continue to be written on the duties, responsibilities and potential personal liabilities at law of company directors. These subjects have proved a very popular topic for books, articles and university theses. There is much one can say about the position at law of company directors. Considering more than 40,000 companies have registered in Malta since 1965, the question of company directors' duties continues to attract both academic and practical interest.

Since a company is a legal person and the creation not of nature but of law, it is axiomatic that it cannot move or act by itself. Although we are very fond of companies and we have no problems dealing with them, a company remains a convenient legal fiction which has however become by far the most popular form of doing business in Malta and accordingly an important motor of local economic activity. A company needs directors and other officials in order to operate and to inter-act with other persons, physical or legal. Directors are the most important officials of a company. They lead and direct the company's affairs and they manage or supervise the management of its operations. Maltese law, like UK law on which it was modelled, sets out one tier level of management, consisting of the board of directors. The minimum number of directors in an ordinary company is one. Regulated companies would, in pursuance of the so-called 'four eyes rule" usually be required to have a number of directors and certain qualifications may be imposed.

Our Companies Act adopted in 1995 does not distinguish between directors except in specific circumstances for particular purposes. It certainly does not, for instance, differentiate between so-called executive and the non-executive directors, a distinction which has practical significance in the Listing Rules issued by the Listing Authority under the Financial Markets Act, but not so under ordinary company law. One should therefore use these terms with extreme caution. One of the unrecognized strengths of our Companies Act is the manner in which it applies to financial services companies in the same manner it applies to ordinary unregulated companies.

Nevertheless the quality and the risks attached to the role of directors in a company may vary according to the circumstances. At the risk of over-simplification, the position may best be explained by describing two extreme hypothetical cases. In the case of a small private company where the shareholders and the directors are the same persons: the relationship between shareholders and directors is very close and intimate and indeed the roles might get intertwined. The interests of the directors and of the shareholders may be practically identical. On the other hand, in a second scenario involving of a large public company, the directors might not even know any of their shareholders. Here, the legal position of the directors is quite different. The proposition that a greater degree of care is expected from directors who lead, supervise and direct the affairs of the public company can hardly find objection.

The Companies Act imposes on directors "general" duties as well as "specific" duties. The Act sets out a very recent and useful statement of the general duties of directors. The beauty of this legal provision is its application to all companies of whatever type, nature or size. That is indeed why it is called a general statement.

Article 136 A was added in 2003. It had been felt for some time that a clear provision telling directors what company law broadly expected from them was long over-due. The Commercial Partnerships Ordinance like the UK Companies Act of 1948 on which it was loosely based did not have a similar provision. Until 2003, the UK shied away from introducing a general statement of directors' duties. Other jurisdictions, notably Australia and Canada, had already crossed that bridge and it was decided that Maltese law too should progress and introduce such a statement on the grounds that directors should be aware of what is expected from them. After much discussion, article 136 A was produced. The drafting of this article is very focussed and one attempts to summarize it at considerable risk. The main rule is that directors should act in good faith in the best interests of the company. They are made responsible for "the general governance of the company and its proper management... and the general supervision of its affairs" – an extremely important principle which should be borne in mind when analyzing the relationship between directors and regulators and the directors' role in ensuring that their company complies with all the laws and regulations relevant to its operations, including but not exclusively the Companies Act.

When the law requires directors to promote the well being and best interests of the company, it does not distinguish between short term and long term interests. There may well be instances where a long term approach conflicts with a more short-term approach, and vice versa. It would be reasonable in the writer's view to suggest that directors are allowed to take a broader longer term view of what a company's well-being requires, provided whatever decision is taken is made in good faith and not intended to benefit the directors' own best interest and well being, whether short-term or long-term.

Should or may Directors also seek to promote the interests of the company's clients, employees and creditors? Article 136 A still retains the basic rule that directors act in the best interests of the company and promote its well-being. The relevant provision does not specifically require directors to take care of employee, consumer or other stakeholder interests in carrying out their governance duties; but nor does it exclude such a proposition. The protection of its long term reputation and survival may well represent the company's true best interest. It is argued that this would reflect a more enlightened and less narrow notion of what constitutes a company's best interest.

The duties and responsibilities of regulated companies, authorized by a public authority to carry out functions that affect the public, carry a heavier burden and standard of conduct and performance than simple trading companies that do not provide goods and service to retail customers. A company carrying on regulated financial services activities would be expected not to pursue solely its shareholders' best interests but it should also take into account the interests of its customers and investors (used in a wider sense to include all consumers of financial services). The financial services sector is intensively regulated and rules and regulations, despite any good intentions to the contrary, continue to evolve and expand, thereby increasing the responsibilities of those entrusted with the direction and general supervision of the affairs and operations of a licensed company. Apart from their duties and obligations arising under the ordinary company legislation, directors and senior officials of authorized financial services companies owe duties towards their regulators as well as to their customers.

The Companies Act also contains provisions which regulate the disqualification of directors , the prohibition of directors competing with their own company, disclosure of interests and the joint and several liability of directors. One should also not fail to note the important statement in article 150 that:

> "Anything required to be done by a company under any provision of this Act shall be deemed to be required to be done by the officers of the company."

Once again, as the most important officers of the company, the directors carry the primary responsibility for ensuring that the company fulfils its duties under the Companies Act.

Whereas article 136 A deals with the general duties and responsibilities imposed on directors, other sections of the Act lay down a series of additional specific duties and responsibilities which directors must satisfy. Just to mention a few: the obligation to file resolutions and forms as applicable; the obligation to hold an annual general meeting; the obligation to prepare financial statements; the prohibition against approving accounts which are deficient; the obligation to convene a general meeting upon a serious loss of capital. These are a few of the specific duties imposed on directors by the Companies Act. Whether one is a director of a bank, a factory or a retail undertaking, these duties and responsibilities apply equally.

An aspect of governance that warrants attention is the internal arrangement and the distribution of duties within a company's board. A particular director may have been specifically assigned responsibility for say marketing, another one for financial matters and another director overseeing regulatory compliance. In such cases, the director in question would be accepting an even greater responsibility (and therefore personal risk) for failures within the particular sector assigned to him.

This point merits some more reflection. Where a director alerts the Board to some wrongdoing or non-compliance, and the other directors ignore the warning and carry on regardless, these other directors may on grounds of their omission be assuming a much greater share of responsibility for any ensuing consequences, legal and regulatory.

From both a strictly company law and a regulatory perspective, where a director finds that he is unable to carry out his duties properly, or he does not understand the company's operations or business, or has serious doubts about the legality or correctness of some of the company's activities but he cannot do anything effective about it, he should consider withdrawing, i.e. he should seriously consider resigning both in his own interest and in the best interest of the company. The law no longer looks so benignly at the failures of an incompetent or useless director. The old principle that a director may be incompetent provided he is honest today carries little weight.

Duties under special legislation

Apart from the general and specific duties arising from the Companies Act, duties and responsibilities may arise under a series of other laws. Company directors must watch out for additional often burdensome duties which may be described as "special" as they originate in special legislation. These arise from fiscal laws, such as income tax and VAT, as well as from other legislation such as financial services, consumer and even gaming law. Several new obligations have been imposed on company officials under the influence of European Union laws particularly in the areas of public safety and public health. These give rise to special duties and obligations. To provide one illustration, under the Product Safety Act, directors are now under an express obligation not to manufacture or to place unsafe products on the market.

Other duties and obligations arise under a variety of legislation and much would therefore depend on the type of activity carried on by the company.

Needless to add, directors of a company which has obtained a listing on the Exchange accept another additional dimension of obligations. The so called Listing Rules are intended to better protect the interests of existing and prospective investors and to safeguard the integrity and reputation of the market against market abuse and similar offences. The earliest rules on insider dealing can be sourced to the Malta Stock Exchange Act of 1990, but a more comprehensive and stringent regime has been established in 2005 with the adoption of the Prevention of Financial Markets Abuse Act, which transposed the EU Market Abuse Directive. This law has introduced an added framework of restrictions on self-dealing and of reporting obligations on company directors and managers of listed companies. In this legislation, Directors usually qualify as typical insiders and are consequently expected to properly manage the risks that may arise from the possession of unpublished, price sensitive corporate information.

In the context of companies carrying on licensable activities, individual directors and other officials may be held personally responsible for specific breaches of laws or regulations and for supervisory omissions and on this ground be ordered to pay pecuniary penalties or face other disciplinary measures. In most cases, directors and other officials may be suspended, disqualified or excluded from office for some time or indefinitely. This latter mechanism avoids the difficulties inherent in recovering the penalties, which indeed may eventually require executive judicial proceedings. Regulatory agencies would usually prefer to only resort to court proceedings as a last resort because of the time and resources these necessitate, resources and time that can be placed to better use in promoting and protecting the general interests of the public. In broad terms, however, experience shows that directors or even company chairmen would more likely risk being held culpable for failure to properly supervise rather than for directly committing the wrongdoing.

In many instances, regulators may actually have little contact with company directors themselves and may more likely have closer contact with officials like the chief executive officer, the general manager, the compliance officer, the legal adviser or the company secretary. Where serious regulatory breaches are identified, it is not surprising that the directors may suddenly find themselves having to account for their acts or, more likely, for their omissions in preventing breaches by others. The compliance officer plays a vital role in preventing possible breaches.

These rules further compliment the framework of general duties set out in the Companies Act. Various laws envisage the possibility of individual directors being subjected to administrative sanctions and criminal responsibility for the company's failures and breaches.

The Malta Financial Services Authority Act

This paper would not be complete without a brief mention of the Malta Financial Services Authority Act. This Act establishes the Authority which serves as Malta's single unified regulator for financial services and assigns to it various powers it may exercise in order to achieve its functions and objectives. Article 16 of the Act is the most relevant for the present purpose because it deals with the subject of 'Powers of the Authority' (marginal note) and because in doing this, it specifically addresses the position of directors and officials of licence-holders. The reach and implications of this article are significant and the following extract certainly merits quoting:

> "The directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities falling under the supervisory or regulatory functions of the Authority shall assist and collaborate with the Authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information and documentation as the Authority may reasonably request from time to time."

These provisions have been placed in this particular Act because it was intended to apply them across the board to all financial services providers licensed or authorized under any of the numerous laws administered by the MFSA. Their inclusion in the Act which governs the functions and powers of the regulatory authority, which is the common link between all the various legislative measures, automatically and indirectly extends the rule to all the other financial services legislation, which include the banking and investment services laws. A sub-article of article 16 allows the MFSA to issue binding written directives to any official of a licence-holder, and states that "the official to whom the notice is addressed shall obey, comply and give effect to any such directive within the time and manner stated in the directive." A directive may require a director or other official to do or to refrain from doing any act, and it may stipulate "prohibitions, restrictions and conditions". The director's obligation to assist the Authority cannot be restricted or impeded by some contractual gagging or secrecy clause, which have no effect against the Authority. Finally the article also states quite plainly that directors may be held responsible for a licence-holder's breach of a licence condition or a directive and may be subjected to an administrative penalty by the Authority up to a maximum of 93,174,94 euros.

The Compliance Officer

This part shall now consider a few issues from a compliance and regulatory perspective. Despite the importance attributed to the appointment of compliance focussed officials embedded within financial services companies, it is interesting to note that none of our primary financial services legislation actually mentions the compliance officer. The requirement arises mainly out of the various Rules issued by the competent authority under different regulatory legislation. In this context, one encounters the relatively recent regulatory device known as the 'compliance officer.'

The "Guidelines for Compliance Officers" in Insurance Rule 6 and Insurance Intermediaries Rule 12 refers to this office. The Investment Services Rules require licence-holders to appoint a compliance officer and assign huge regulatory obligations to the post. Investment Services Act Rules (Part B Standard Licence Conditions) lay down the significant duties assumed by a compliance officer.

The Banking Rules do not specifically refer to a compliance official. They make no reference to or contain guidelines concerning the appointment and responsibilities of a compliance officer, which is rather surprising and to some degree also disappointing. The Banking Rules do impose on a bank a general obligation to set up effective internal controls and proper governance structures, including what is termed as a "compliance function" within its organization. The compliance function is not defined and one does not find a description of specific duties as set out in the ISA and Insurance Rules. Other rules govern how a bank's governance and internal audit and controls need to be established, a requirement which now also arises under new article 17B of the Banking Act, added only recently in 2007.

The Banking Act requires that a bank licence application may only be submitted by a company. Its directors need to be approved as fit and proper by the competent authority. The Banking Act does not add any new broad statement on directors' duties on the lines of section 136A of the Companies Act. Additional duties on companies carrying on banking and, consequently, on their directors, arise under some of the provisions of the Banking Act. These include the duties in relation to prohibited transactions and to the obligation of secrecy of banking transactions.

The compliance officer, whether a director or otherwise, has a fine balance to achieve and may well have to meander his way between mixed loyalties. He reports to his employer and its board of directors while at the same time he is usually expected to report to the regulatory authority. In some cases, he is required to play a mandatory whistle-blowing role: not a job for the faint-hearted and a job one should apply for with much caution. Only a senior official enjoying the two qualities of assertiveness and credibility can successfully balance these two interests. He fails at his own risk.

The appointment of a compliance officer does not exempt or free a board from further responsibility for compliance issues. The compliance function ultimately remains the responsibility of the board of directors, even though it may have delegated the actual practice of the function either to a member of the board or to another designated official. To slightly adjust an earlier example, if a compliance officer alerts his directors to a non-compliance issue, and the directors choose to ignore him and carry on regardless, the responsibility of the board for its omission and for any consequences should be clear. However, being the official recognized by the competent authority, the compliance official may still find himself called to account by the competent authority particularly should he fail to relay the alert and compliance breach to it. This is perhaps one reason why the ISA Rules quite correctly describe the Compliance Officer's responsibility as "onerous".

Three final propositions will be offered here for the sake of completeness. First, all the financial services Rules mentioned so far in this paper correctly distinguish clearly between the compliance officer and the Money-Laundering Reporting Officer. It would be a mistake to fudge the two roles. This paper is not interested in the latter office. Secondly, most banks would also have an ISA licence which means that they would in any case have to comply with the requirement to appoint a compliance officer under the same terms as any other ISA licence-holder. Thirdly, the Listing Rules do not require the appointment of a compliance officer for public listed companies.

The first compliance function

The Malta International Business Authority Act of 1988 was the single measure which allowed the establishment and regulation of offshore companies during the period 1989 to 1996, and merits some consideration in this discussion. This law required offshore companies to have certain qualified directors and to appoint a "nominee company" within its internal governance structure. The compliance requirements which the Act imposed on nominee companies were truly innovative and extraordinary for the time. A few leading law firms hesitated to offer this service because the legal obligations set out in the legislation were considered too onerous and the risks of mixed loyalties and personal liability were potentially prohibitive. In the brief history of the compliance function in Malta, the nominee company and its express duties of notification to the Authority may be seen as the direct conceptual predecessor of the compliance officer in financial services companies and more recently of the "Key Official" in the remote gaming industry.

The entire 1988 Act, and in particular Part III, is worth examining as it indirectly contributed to the development of company law in Malta. Indeed, article 27 whose marginal note read "Application of Commercial Partnerships Ordinance" explained in detail the different ways in which the Ordinance was applied to offshore companies and their directors. An offshore company could only be established in Malta where a warrant was issued in its favour by the offshore regulatory agency. Some may be surprised to discover that offshore companies were under much stricter and extensive controls and supervision than ordinary local companies. They also paid much higher registration and annual fees. Probably the most striking rule was that which imposed personal and joint and several liability on a director of a nominee company for all the important and delicate oversight and compliance obligations imposed on nominee companies by the Act.

The nominee company was a professional services company which served its offshore company clients but had also very specific and important reporting and loyalty duties towards its regulatory authority. Many nominee companies acted as directors of the offshore companies and played a very significant intermediary role. If my history serves me well, the nominee company introduced the very concept of a compliance role into Maltese law and professional practice.

The Key Official

At this point, one may also usefully refer to recent developments in another regulated activity, namely gaming and lotteries regulation. The Lotteries and Other Games Act of 2001 sets out the functions of a new oversight agency known as the Lotteries and Gaming Authority. Regulations made under this Act require the appointment of a "Key Official" in licensed online gaming operations. In brief, every licensed remote gaming company is required to appoint one of its directors as the key official, an interesting new compliance device.

The key official in gaming law is the equivalent of the compliance officer in regulated entities operating in the financial services sector and is to a degree a relation of the money-laundering reporting officer. One can view the key official as the direct conceptual descendant of the nominee company concept originally created and introduced in the 1988 offshore legislation.

The most radical and, to my mind also the most controversial, provision of the key official mechanism is the rule that the key official cannot simply resign and walk away from a company he might no longer be happy to work for. The rules require the approval of the LGA before such resignation can become effective. One may think that forcing a person to remain in a post he does not wish to occupy and from which he is seeking to withdraw is not ideal and may give rise to anomalous situations. One suggests that giving say one month's notice of termination, added to a requirement that the key official must clearly inform the LGA of the reasons for his resignation, could be a better alternative.

In the gaming law, the key official (whose functions are described in the ministerial regulations and not in the primary law) has to be a director and his duties are truly extensive. One may almost describe him as a "compliance superman" or is he more of a "scapegoat extraordinaire in waiting"? He risks being blamed if anything goes badly wrong. It is important that the regulatory agency acts correctly in his regard because I see a risk of expecting too much from a compliance officer. It is probably unfair to consider him as a whistleblower permanently in place at the licensed firm's premises.

Naturally, having a compliance mechanism in place whether in the shape of compliance officers, key officials or nomine companies is without doubt very useful for a regulatory agency. The compliance officers undertake a difficult role as they have to monitor and supervise the activities of their own employer and senior officials and they assume responsibilities to the regulatory authority whose hand is made stronger by the fact that it authorizes both the operator and the compliance officer.

The compliance officer acts as the first point of contact for the regulatory agency but he does not form part of it and he remains an employee of the licensed entity. If a compliance officer is expected to have a direct loyalty and wide reporting duties to his employer's regulator, then the law should say this more clearly and support him with an adequate legal framework. The law would protect him by making his duties clearer and more transparent. After all, it is the firm which is licensed and which carries on profitable activities on the strength of the licence and not the compliance officer who is often just an employee and salary earner. Where the compliance official is a director, the legal position does change to some degree. This was the position with the nominee companies and is still today with the key officials. Certainly, it makes sense to insist that the compliance function should be placed in the hands of company officers occupying a senior managerial post in the licensed entity. We have already seen that the ISA Rules rightly describe the role as "onerous". He should therefore hold a grade that gives him authority, standing and credibility within the organization. Otherwise, he might well turn out to be a compliance officer of straw.

CONCLUSION

Compliance officers of some kind or another are becoming more and more a normal feature of our regulatory landscape. One may be correct in suggesting that regulators generally love having compliance officers, particularly where formal and informal contacts are rendered possible. Nonetheless, our primary laws in the financial services area do not make any reference to the post and to the responsibilities attached to it. In the financial services field, the posts are mentioned and dealt with in the Rules, the third tier of regulation which is binding on licence-holders.

It may be time to re-appraise what we seek to achieve from compliance officials. This exercise has to explore the role that the compliance officer plays within the company structure and his reporting duties and inter-action with the directors of the company which employs him. The temptation to expect too much and to use the compliance officer as a convenient scapegoat for all seasons, answerable for anything that may have gone wrong in the regulated entity is there and should be avoided. Responsibility for failure to adhere to the rules and for corporate wrongdoing must remain primarily with the Board and the directors. Even though they might not like it much, it is also their duty to supervise the working and performance of the compliance function and of the compliance official.

We have already seen that the role of company directors is not a mere administrative or formal one. Directors are expected to direct and supervise the management of the company. A director should be expected to develop a personal awareness of general company rules and principles, and of duties and obligations arising under the special legislation that applies to his company's undertaking. It is unwise and unacceptable for directors to merely or totally depend on others. Total ignorance and a lack of interest is no longer an option. Naturally, directors of banking and similar companies also remain subject to the criminal law. Readers may recall that two directors of the ill-fated BICAL bank which collapsed in the seventies were sent to jail for a number of criminal offences ranging from misappropriation to forgery.

If a company does not have a compliance official properly so appointed and designated, then the full responsibility for ensuring compliance with the applicable laws and regulations including the Companies Act would appear to fall on the company directors. Despite the importance of the rules governing the duties of the various compliance officials, the over-arching principle remains that the directors are the chief officers of the enterprise and remain ultimately responsible for the company's activities and compliance. They should not be allowed to hide behind the veil of the compliance function or of other officials who after all would have been appointed to their posts by the same directors.

As is the case with regulation, the subject of directors' duties and liabilities has often developed subsequent and in reaction to corporate crises situations and in response to increasing or changed political and public expectations. The law and the public today expect more from directors than has been the case in the past. On the 24th May 2010, the Court of Appeal decision confirmed the unlimited personal liability of three directors of the former retail giant The Price Club which crashed controversially under the weight of considerable debt some years ago. The directors were found "inter alia" to have breached the company law prohibitions on wrongful trading and fraudulent trading. This judgement contains interesting statements on a company director's responsibilities towards creditors, his duty to know and to participate in the company's business, his responsibility under the rules of wrongful trading and fraudulent trading. There are therefore important lessons to be learnt by all directors irrespective of the size and business activities carried on. These requirements would seem to be of even more importance for regulated entities authorized by a public agency to offer services to the public. The judgement may have been a bad day for the former directors in question, but it was a good day for company law and the enforcement of its rules governing the conduct and behaviour of directors.

This brief paper has attempted to address certain issues relating to directors of regulated entities, particularly in the financial services area but not exclusively. The relationship between regulators and directors of regulated companies shows an interesting dynamic which is often little understood. A supervisory agency may consider it a serious shortcoming on the part of a licensed entity or its officials to breach or fall short of their respective obligations and requirements under company legislation, a shortcoming that may even prejudice their good standing with the supervisory agency. The fact that a company has obtained a financial services licence and has become subject to scrutiny and supervision under specialized and detailed legislation administered by a public agency does not imply that it has the right to ignore or forget about complying with the generally applicable company law requirements. Instead, such companies and its directors should become even more diligent in ensuring full compliance with company legislation.

In recent years the law regulating company directors has attracted considerable attention amongst practitioners, academics and, of course, directors themselves. Much of the attention has focused on important issues relating to corporate governance and directors' duties. This book expands on the area of directors' duties by comprehensively dealing with a subject of growing importance – that of the personal liability of directors. The book has been written by a number of contributors who possess a wealth of knowledge and understanding of the subject and who successfully blend a practitioner's approach with academic finesse and analysis. Collectively, they offer an interesting and thought-provoking insight into some of the more intricate areas of the law regulating the duties of directors.

Directors are loaded with responsibility. As ignorance of the law is no excuse, directors need to be aware of the existence, and extent, of their obligations at law. This publication will be of interest not only to practitioners and academics, but also to directors who wish to be aware of their duties and potential liabilities at law.

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