


CorporateLiveWire

HANDBOOK 2023

Finance & Investment

Fraud & White Collar Crime

Intellectual Property



p14 Enforcing restraints of trade in franchise agreements in New Zealand

By Khushbu Sundarji

p20 The Swiss reform on the company limited by shares

By Cecile Ringgenberg

p36 How cooperation in Australian corporate crime investigations may lead to greater leniency

By Dennis Miralis

p38 Duties and responsibilities of company directors

By Dr Christos Clerides

p62 An expert interview with Marco Imperiale on the impending AI Act within the EU

DUTIES AND RESPONSIBILITIES OF COMPANY DIRECTORS

By Dr Christos Clerides



The Cyprus Bar Council – through its Companies’ Committee – recently opened a programme on the legislative framework, case law and recent developments on the duties and responsibilities of company directors.

The programme focuses on the duties of care and skill, and fiduciary duties of company directors with case studies. It extends to the obligations and liability of directors in insolvency cases and to the torts and liability of directors to third parties.

All these issues are very serious, especially given that, in many cases, directors of companies are colleague advocates. The issue is made particularly pertinent by the fact that a legislative attempt is being made to hold directors personally liable for tax on matters relating to companies for which they are directors in the exercise of their professional duties.

The role of directors includes the duty to:

- Act within their powers and the powers of the Company.
- To promote the success of the company – known as “Article 72 duty” of the Companies Act 2006, which, although not applicable in Cyprus, is guiding.
- Exercise independent judgment in decision-making.
- Exercise due diligence and skill and demonstrate reasonable care.
- Avoid conflict of interest.
- Refrain from accepting benefits from third parties.
- Declare interests in proposed or existing transactions or operations with the company.



are of particular interest in cases where the company is unable to meet its obligations.

In such cases, the managing director is liable for wrongful trading, fraudulent trading, and misfeasance (misapplied or retained company assets or wrong exercise of his authority). Keeping records, taking independent advice, and data protection law also forms part of the modern law of directors’ duties, as does the need for insurance cover.

The out-dated Companies Colonial Law, Cap. 113, based on the 1948 Companies Act, is still in operation in Cyprus today with few changes to date, mainly through the incorporation of the EU Companies Directives. It is currently under review by a team of foreign experts in association with local advocates.

These duties are owed to the company but shareholders through derivative actions for the benefit of the company can also secure them.

A director may secure “relief” in the event of a breach of duty by obtaining a shareholders’ resolution, or a court order, or even insurance. His duties, however, are not only those set out in Companies Colonial Law, Cap. 113, but also derive from other legislation. The duties of a director

