



Disclosure of a Director's Personal Financial Interests

The Companies Act introduces a far more stringent set of rules relating to disclosure of personal financial interests than the previous Act.

A director is required to disclose his personal financial interest on any matter to be decided by the Board. He is also required to disclose a financial interest of a second company or CC in which he or his relation is a member.

He is required to disclose all personal financial interests - whether or not significant to the company and including any interest that he knows of that a person related to him might have in the transaction or agreement. This includes any interest that he reasonably ought to have known about. He is therefore required to disclose not only his, but also his spouse's, his father's, his brother's or his child's personal financial interest in any matter before the Board (within two degrees of natural or adopted consanguinity or affinity).

Failure to do so may result in him being personally liable for a breach of fiduciary duty. He may be liable for any losses or damages or costs sustained by the company as a result of his non-disclosure, and also to any other person for any loss or damage suffered by that person as a result of the contravention.

A prescribed officer (for example a financial manager), alternate director and member of a committee* who may not necessarily be a director on the Board, is also required to disclose in the same way.

PROCEDURE FOR DISCLOSURE

The director is required to disclose his personal financial interest before it is considered by a meeting of the Board and to recuse himself by leaving the meeting without taking part in the discussion. The 1973 Act did not require the director to recuse himself.

Although the director is required to recuse himself from the meeting, he is regarded as present for the purposes of constituting a quorum.



However, he must not be regarded as being present for the purpose of determining whether a resolution has sufficient support to be adopted and he must not execute any document on behalf of the company relating to the matter unless specifically directed to do so by the Board.

A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any personal financial interest of a director or person related to the director, if it was approved after full disclosure in the manner explained above or has been ratified by an ordinary resolution of the shareholders.

The requirement to disclose personal financial interests does not apply to a company or its director if that director holds all of the beneficial interests of all of the issued securities in the company and he is the sole director.

Where the only director is not also the sole shareholder (i.e. he has co-shareholders), then he may only enter into a contract in which he or a related person has a financial interest, after obtaining an ordinary resolution from the shareholders.

A director who complies with the disclosure requirements in Section 75 goes some way to his satisfying his obligation to act in the best interests of the company and with the required care, skill and diligence.

* Does not include a member of an audit committee.

IMPORTANT NOTE: The information contained in this newsletter is of a general nature, and may in certain circumstances be subject to misinterpretation. Consequently, we recommend that our advice be sought when acting upon the information contained herein. While every care has been taken in the compilation of this newsletter, no responsibility of any nature whatsoever shall be accepted for any inaccuracies, errors or omissions. Any references in the articles contained in this newsletter to the masculine, includes the feminine, and vice versa.