



Directors

Although the new Companies Act is now a few years old, companies, their directors and their advisors are still getting to grips with the changes introduced. Under Section 250 of the Companies Act 2006 (“the Act”), a director includes any person occupying the position of director, regardless of whether he is officially named as one. The term “director” is seen as wider than simply including a person who has been validly appointed as a director and can also include defacto directors and shadow directors. In the companies act directors include any person occupying the position of a director, by whatever name called. This may imply that the definition of a director may also include is a de facto director. A de facto director is an individual who claims and purports to act as a director, although not appointed as such.

Further under section 251 (1) of the Act defines general director as a person in accordance with whose directions on instructions directors of a company are accustomed to act. However, merely giving of instructions does not make someone a shadow director. Shadow director must be able to exert influence over the company's affairs and control the actions and decision making of a majority of the board of directors over a period of time. Section 251 (3) of the Act makes it clear that the body corporate is not to be regarded as a Shadow director of its subsidiaries in relation to general duties of directors. To become a shadow director, a person must exercise a real influence over the company's affairs and direct the acts of the directors, such that the majority of the board acts on those instructions, as a matter of practice, over a period of time. It is not a requirement that that person needs to have controlled all of the activities of the board.

Shadow directors are deemed to be a director of the company for all purposes. The act frequently explicitly states that the Shadow director is treated as a director. A person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity. A shadow director should not never sign a document on behalf of the company and for notaries this is extremely important. If attending board meetings, a

shadow director should ensure that he is present as an observer, is not drawn into any discussions with the board during the meeting, and leaves before any decisions are taken.

A Shadow director is one who does act as a director but on the contrary does not claim to be a director, lurking in the shadows and sheltering behind others who he claims are the only directors of the company. It is likely that the person may act both a de facto and shadow director in relation to the same company at least in relation to different matters. It is unlikely that the fiduciary duties under sections 172 to 177 will be imposed on shadow or de facto directors.

Company appointment reports within Companies House WebCheck are provided free of charge since 1st October 2012. It is important for notaries to ensure that the directors signing company related documents are listed at Companies House from time to time.

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