

IoD Sustainable Finance Week Seminar

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Directors' duties

- Why are directors' duties important?
- Duties are comprised of:
 - Fiduciary duties
 - Common law duty of skill and care
 - Statutory duties
- Duties are generally “owed to the company”, but what does that mean in practice?

Fiduciary duties

- Fiduciary duties include:
 - Acting *bona fide* in the best interest of the company;
 - Exercising powers for a proper purpose and exercising independent judgement;
 - Not fettering the exercise of future discretion;
 - Not making secret profits; and
 - Not putting personal interest in conflict with the interests of the company.

Duty to exercise reasonable skill and care

- Common law duty not a fiduciary duty
- Test has objective and subjective elements
- Director must exercise skill and diligence expected of a reasonably diligent person with both:
 - The general knowledge, skill and experience expected of a person as director of the company; and
 - The general knowledge, skill and experience that the director has.

Prospectus / disclosure liability

- Not necessarily a Guernsey legal issue. Need to consider the markets into which products and services are being sold into
- Liability is not just a reputational issue...
- What processes and procedures do boards (and their delegates) have in place to capture data, audit it and verify disclosures?

Code of Corporate Governance

- Applicable to licensees and collective investment schemes
- A new requirement that: *“The board should consider the impact of climate change on the firm’s business strategy and risk profile and, where appropriate in the judgement of the board, make timely climate change disclosures”*
- Applicable from 1 October 2021

Conclusions

- Actions that a board should take are fact specific
- We would expect all boards to consider their climate competence, conflicts of interest and governance procedures
- Other actions are fact dependent

Our team



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