

## **DIRECTORS BEWARE**

Two recent pieces of legislation should be mandatory reading for Directors of all companies, whether large or small.

### **1. The Companies Act 2006**

This Act received Royal Assent on 8<sup>th</sup> November 2006, but its provisions are being phased in over a 2 year period. So far, only minor provisions have been implemented (e.g. permitting greater use of email communications with shareholders and others).

Once the relevant sections have been implemented, this Act will greatly expand the duties and obligations of all Directors. In short these new statutory duties are:-

- To act with reasonable care, skill and diligence
- To promote the success of the company
- To avoid conflicts of interest

Whilst most Directors will no doubt consider that they already comply with these obligations, the Act gives shareholders greater “teeth” to enforce these obligations, by granting the shareholders a statutory right to bring a “derivative action” i.e. an action (e.g. for damages or other relief), with the permission of the Court, in the name of the company against a director. This remedy was previously a difficult one to pursue. The rights of minority shareholders claiming “unfair prejudice” pursuant to Section 459 of the Companies Act 1985 have been preserved.

For more information on the Act, please click on the following [link](#):

### **2. The Fraud Act 2006**

This Act came into force on 15<sup>th</sup> January 2007. It replaces the deception offences in the Theft Acts with three new fraud offences:-

- Fraud by false representation
- Fraud by failing to disclose information
- Failure by abuse of position

It is understood that the Crown Prosecution Service will look to use this Act to a greater degree against Directors in respect of their activities.

These two pieces of legislation illustrate the desire of the government to make Directors more accountable for their activities. The “corporate veil” and limited liability are viewed these days as a privilege, not a right available to Directors in all circumstances.

If you would wish further advice with regard to these or related topics, please contact Chris Millar on 01306 502225 or by e-mail “[click](#)”.