



THE COMPANIES ACT 2006:

Directors' Duties

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1. This paper discusses the recent developments in company law and in particular the likely impact of the Companies Act on directors' duties. I will consider:
 - 1.1. Progress and Effect of the Companies Act.
 - 1.2. How old is the Old Law?
 - 1.3. Directors' Duties: Revolution or Evolution?

The Companies Act 2006

2. The Companies Act represents the culmination of years of hard work by the Law Commission and the Companies Law Reform steering group ("the CLR"). The CLR was set up by the DTI in March 1998. There have been numerous reports and White Papers (which are considered below), which eventually resulted in the Companies Law Reform Bill. This was then renamed the Companies Bill since the role of the proposed legislation changed. Needless to say this Act has had a long and difficult passage. The comments I offer are necessarily provisional, because there is significant room for interpretation by the Courts.
3. The Act is now the longest ever Act of its type. It is over 700 pages long and has no less than 1299 sections. Rather than being content with mere reform of our company law, the government (due to pressure in the debates and at committee stages) has decided to consolidate and restate much of the existing provisions of the Companies Acts. However, a number of key parts of the old legislation have been left in place. For example, the existing "unfair prejudice" provision under s. 459 Companies Act 1985 remains in place. The new Act proceeds in parallel with the new formulation of the derivative action. Useful tables of destination and derivation have been posted on the DTI website that set out the changes (see <http://www.dti.gov.uk/files/file29796.doc>).



4. The Act was enacted on 8 November 2006. However, the Government only intends the main provisions discussed herein to be law from October 2008.
5. In addition, the Act provides for further regulations to be enacted and adopted. For example, there is express provision for further regulation of the judicial discretion exercisable when considering an application by a member to bring (or continue) the new derivative action (see s. 263(5)).

Key Provisions for Directors

6. It is clear that the totality of the Act will affect the management and operation of companies and therefore be relevant to directors in many respects. There are essentially four key parts of the Act that particularly affect directors, being:
 - 6.1. Directors Duties: ss. 170 - 181.
 - 6.2. Declarations of Interests: ss. 182-187.
 - 6.3. Transactions requiring approval: ss. 188-226.
 - 6.4. Derivative Actions: ss. 260-264.
7. The focus of this paper is the civil law obligations, duties and remedies.
8. Further, there are other parts of the Act that will need to be considered by directors:
 - 8.1. *Age limits for directors:* The Act permits persons over 70 to act as directors of public companies. This does not require specific shareholder approval. It also introduces a minimum age of 16 for directors.



- 8.2. *A Minimum of one natural person to act as a director:* this is seen as introducing a truer sense of personal responsibility and thereby better corporate governance.

- 8.3. *Home addresses can be withheld from disclosure:* This will be balanced by the provision that Companies will be required to keep a register of individual directors' usual residential addresses. This will be private. A Director will be allowed to give his company's registered office address as his address for service of documents.

Understanding the Act

- 9. As with any new piece of major legislation there will be uncertainties as to how it should be interpreted. The Companies Act is likely to be a source of many arguments. The provisions as to directors' duties will probably be amongst the most fraught. This means that the source material for the proposed Act will be visited time and again. With the long development of the Act, there is a vast amount of interpretative documentation that will have to be mastered.

- 10. Of particular interest to lawyers will be the following source materials:
 - 10.1. Hansard.

 - 10.2. DTI Guidance notes (or "Old" Explanatory Notes; "EN").

 - 10.3. Company Law Review of 1998

 - 10.4. Law Commission report "*Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties*"



10.5. White Papers 2002 and 2005.

11. At present, the best place to access this material is the DTI website (<http://www.dti.gov.uk/bbf/co-act-2006/index.html>). This has an exceptionally good collection of key material.
12. Of particular note is the fact that the DTI plainly intends to provide useful material to assist companies and explain the Act. For example there are the “new” Explanatory Notes for the Act (see http://www.opsi.gov.uk/acts/en2006/ukpgaen_20060046_en.pdf; “New EN”) and a briefing note on the rolling timetable for transition to the new regime (see <http://www.dti.gov.uk/files/file36201.doc>).
13. In addition to the legislative background there is the old law. It is clear that while the Act is intended, in part, to be a reforming act, the parts dealing with directors’ duties are essentially a codification of the existing law (see s. 170(3) & (4); and Old EN paras. 280-283 and New EN 298 - 314). The aim is said to be “*greater clarity on directors' duties*” (DTI press release 5 June 2006; and see the press release of 8 November 2006). This would be simple enough, if this were correct.
14. The main parts of the Act dealing with directors duties are ss. 170 to 177. There are two problems. First, the list of duties does not offer a complete codification of the existing rules. This is partly due to simple gaps (such as misappropriation of assets, which is not separately addressed) and partly due to the nature of the duties in question. The equitable duties can never, by definition, be exhaustively defined and accounted for (see below and CLR Chapters 2 & 3). Second, it is clear that those duties that are stated go beyond a mere restatement of the common law. For example the new duty that “*A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole*” (s. 172) goes on to state various aspects of that general duty. These include surprising considerations, such



as the need to take into account “*the impact of the company’s operations on the community and the environment*” (s. 172(1)(d)). While there maybe good political arguments for such a statutory provision it is clear that the drafting goes well beyond mere codification, given that these particular concerns and criteria have not been considered by the Courts.

15. The effect of the divergent aims of the Act, being codification and reform, means that there is a real likelihood of extensive litigation on the meaning of the sections. It is most likely that in the end the “new law” will substantially reflect the “old law”. However, if litigation is required to clarify the “codified” duties it must be questionable whether the Government will have succeeded in providing “*greater clarity on directors’ duties*”.

Directors’ Duties: Revolution or Evolution?

16. As suggested above it is my view that it is unlikely that the reform/codification of the directors’ duties will be a revolution in company law. The provisions should be considered as more of an evolution. This is because in some ways the duties are stricter, whether because of the content of the duties or ease of enforcement (i.e. the derivative action; see below). In other ways they are more flexible and better suited to the needs of business (e.g. the provisions allowing authorisation of conflicts of interest (s. 175(5)) or disclosure provisions).
17. In order to understand such an evolution it is necessary to go back to the purposes of the Act. The short point is that the reasons for the Act are complex and diverse. The legislature has had to walk a tightrope between the need for regulation (i.e. for consumers/shareholders) on the one hand and the need for flexibility (i.e. for business). This tension is compounded by the fact that the Act is a very ambitious piece of legislation that covers a plethora of issues and business models/environments.



18. The 2005 White Paper usefully explains the competing interests. A brief consideration of the key aims immediately shows the potential inconsistencies. The four aims are said to be to formulate a system of corporate governance and company law that (Part 2 p. 2 of the 2005 White Paper):

18.1. Facilitates enterprise by making it easy to set up and grow a business.

18.2. Encourages the efficient allocation of capital by giving confidence to investors.

18.3. Promotes long-term company performance through shareholder engagement and effective dialogue between business and investors.

18.4. Maintains the UK's position as one of the most attractive places in the world to set up and run a business.

19. In turn, the Government has stated that these aims distil into four further practical goals:

19.1. Enhancing shareholder engagement and a long-term investment culture.

19.2. Ensuring better regulation and a "Think Small First" approach.

19.3. Making it easier to set up and run a company.

19.4. Providing flexibility for the future.

20. These laudable aims and goals have been repeated throughout the progress of the Act, but where there are hard cases under the Act it is likely that there will be a clash. The Courts will be invited to pronounce on these matters and the interpretation chosen is unlikely to satisfy all of them.



21. One particular shibboleth that is repeated again and again with respect to corporate governance (and therefore director's duties) is the need to enhance "enlightened shareholder value". It is said in the 2005 White Paper that the Act intends to embed this concept in law *"by making clear that directors must promote the success of the company for the benefit of its shareholders, and this can only be achieved by taking due account of both the long-term and short-term, and wider factors such as employees, effects on the environment, suppliers and customers"*. This is expressly stated to follow from the serious failures of corporate governance exposed by such examples as the Enron, Worldcom and Parmalat disasters.

22. It is clear that this Act contemplates a greater degree of accountability, higher standards of corporate governance, and easier access to enforcement of such duties by shareholders. It appears that these aims are to be achieved by the dual reform/codification of the duties themselves and the mode of enforcement (i.e. the new derivative action).

23. What does not appear to have been intended is a more radical system of regulation. The new Companies Act should not be mistaken to be an equivalent to the US Sarbanes-Oxley Act. However, it is worth remembering that non-US companies will be subject to US filing requirements in respect of financial years ending on or after 15 July 2007 (s. 404 of that Act). The aims of the Act are more modest than such other reforms. Having said that it is likely that in the early years there will be a risk of resurgence in shareholder activism on the basis of the broader duties and wider derivative action, but given the terms of the Act and its genesis it is unlikely that the Courts will be supportive. Further, unlike the US system, the derivative action does not provide the shareholder with a personal action (and thereby compensation). The action is still vested in and taken by the Company (s. 260(1)). This is likely to reduce the financial incentive for shareholder activism.

Scope of the Duties

24. As considered above the provisions of the Act go beyond a mere codification of the existing common law. This is true not only of the content of the duties (see below), but also their scope. There are essentially five points that need to be considered.
25. The first issue is: who owes the duties? The Act is clear that both directors and “shadow directors” owe the duties (s.170(5)). The definition of a shadow director (s. 251) is substantially the same as the under s. 741 Companies Act 1985. It follows that it is likely that the interpretation set out by the Court of Appeal in *Secretary of State for Trade & Industry v. Deverell* [2000] 2 WLR 907, CA will be followed, when the following guidelines were set down (at 919-920 *per* Morritt LJ):
- 25.1. The definition of a shadow director should not be strictly construed (following *In re Lo-Line Electric Motors Ltd.* [1988] Ch. 477 at 489).
- 25.2. The purpose of the legislation is to identify those, other than professional advisers, with real influence in the corporate affairs of the company. But it is not necessary that such influence should be exercised over the whole field of its corporate activities (following *In re Kaytech International Plc.* [1999] B.C.C. 390 at 402).
- 25.3. Whether any particular communication from the alleged shadow director, whether by words or conduct, is to be classified as a direction or instruction must be objectively ascertained by the court in the light of all the evidence.
- 25.4. Non-professional advice may come within that statutory description. The proviso excepting advice given in a professional capacity appears to assume that advice generally is or may be included. Moreover the



concepts of "direction" and "instruction" do not exclude the concept of "advice" for all three share the common feature of "guidance."

- 25.5. It is not necessary to show that all the directors are subservient to the shadow director.
26. The second point is that there are some duties that continue after a director vacates his office. These are those arising from conflicts of interest and third party benefits (s. 170(2)). This is a reflection of the fact that the Act seeks to codify a number of disparate equitable duties. On the matter of conflicts of interest, there are generally two key types: "existing client conflicts" (e.g. where the director has two inconsistent "masters" or companies); and "former client conflicts" (e.g. where the director has started working for a competitor). The first duty rests on principles of fiduciary duty and the second on the confidential nature of information held. The second is continuing in nature because the information is capable of remaining confidential after the directorship ceases. As to the question of third party benefits, the exception expressly deals with an instance where a benefit is promised to the director while he holds the position, but accrues after he ceases to hold it. This is presumably intended to cover instances where a director, for example, is promised a bribe in the future to perform a wrongful act in the present.
27. Third, it is vital to recall that there is no change to the well-established principle that the director owes his duties to the Company and not the Shareholders (s. 170(1); *Percival v. Wright* [1902] 2 Ch. 421). There may be other instances where the facts require a remedy at common law (see below).
28. Fourth, there are difficult issues regarding remedies, which the Act simply avoids. Essentially it states that the remedies available reflect those under the common law (s. 178). If this was an Act where full and simple codification had taken place then this provision should prove uncomplicated in its application. The DTI clearly envisages that the



usual remedies would be available as appropriate; i.e. in the case of fiduciary-type duties (Old EN Para. 304; New EN 321-322):

- 28.1. Damages or compensation where the company has suffered loss.
 - 28.2. Restoration of the company's property.
 - 28.3. An account of profits made by the director.
 - 28.4. Rescission of a contract where the director failed to disclose an interest.
29. The difficult questions arise with respect to the “new” types of duties. For example, if there is a breach of duty related to the needs to take into account “*the impact of the company’s operations on the community and the environment*” (s. 172(1)(d)) how will the Court remedy such? It is possible to conceive how the use of injunctive relief could be appropriate in certain circumstances, but the question does bring into stark relief the issue of whether such considerations are really appropriate in an Act of this type (rather than an Act concerned with the regulation of public rather than private rights).
30. Fifth, it will be seen below that the project of codification has created seven individuated duties. Needless to say there is some necessary overlap. This takes three forms:
- 30.1. It is possible to identify the “primary” duty of the seven. The duty to “*promote the success of the company*” (s. 172) is properly considered to be the main duty as it encapsulates the foundational fiduciary duty of loyalty. It is suggested here that all the other duties (under their statutory glosses) should be seen as derived from this main duty.

- 30.2. Some of the duties expressly recognise that these duties are “linked”, such as the relationship between the duties regulating conflicts of duty and the acceptance of benefits from third parties (s. 176(4) and (5)).
- 30.3. The Act recognises that there will be overlaps between the duties (s. 179). In the Explanatory Notes (Old EN at paras. 293 – 296; New EN at paras. 311 – 314) the Government states that the duties should be treated as cumulative *but* individuated. This means that in the case of an apparent conflict between duties the following of one cannot legitimise the breach of another. While nothing is said on the issue of hierarchy, it is suggested here that the Courts will resort to the general fiduciary principles to resolve conflicts or hard cases. It follows that S. 172 will be treated as paramount.

Duty To Act Within The Company’s Powers (s. 171)

31. The basic duty under s. 171 is:

“A director must act in accordance with the company’s constitution and only exercise powers for the purposes for which they are conferred.”

32. This is a well-established duty and is likely to be of limited application. The main issue that should be watched for arises from the meaning of *“the company’s constitution”*. In the Act the Articles of Association are defined (see s. 18). The separate memorandum will not be a significant legal document (see s. 8 and New EN Paras. 31 – 35). However, the *“the company’s constitution”* includes both the Articles and decisions of the Company (ss. 17 and 29; New EN at paras. 315-316 & 323-324). It follows that there are potential risks for the unwary director who does not follow the progress of the board’s decisions. It should be noted that there is no longer a need for an “objects clause” (s. 31).



Duty to Promote the Success of the Company (s. 172)

33. As stated above this is the key provision. Under the old law the general duty was for the director to act in the *bona fides* interest of the company. Under the new law, the principle is subtly different, being:

“A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole”

34. This is essentially the overarching duty loyalty, honesty and good faith required of all fiduciaries. This is consistent with the director’s hybrid role of trustee, employee and agent. In a sense the meaning and application of such a principle should be obvious. For example, setting up a competing company, stealing secrets, taking bribes or misappropriating company property are self-evidently unlikely to *“promote the success of the company for the benefit of its members as a whole”*. However, nothing is ever that simple.

Application

35. There are essentially three points:

35.1. A key question will be how far the Courts are likely to interfere in “good faith” judgments. This is a clear instance when the competing purposes of the Act clash; too much interference and UK plc becomes uncompetitive, too little and we have another Enron or Parmalat. Traditionally the Courts have erred on the side of *laissez-faire* regulation of business decisions (as opposed to intervention where there is clear dishonesty; See *Re Smith & Fawcett Ltd.* [1942] Ch. 304, CA; see New EN at paras. 328 – 327). However, in cases of plainly un-commercial decision making the Courts will intervene (see *Howard Smith Ltd. v. Ampol Petroleum Ltd* [1974] AC 821,



PC). It is likely that a more active approach will be developed in parallel with the duty of care under s. 174.

35.2. It also follows that questions must arise as to how the Courts will develop the notions of loyalty and success. It is likely that the Courts will feel able to develop the statutory principles in the same way as it has equitable principles. The Courts have considered equity as “*dynamic and capable of application in cases where it has not previously been applied but the principle or rationale of the rule applies.*” (Arden LJ in *Item Software v. Fassihi* [2005] 2 BCLC 91 at Para. 41).

35.3. A key question will be “what is success”? It is clear from Hansard that this should be treated as a context driven value judgment. Again, most breaches of the duties will be self-evidently against the interests of the company. Some guidance has been offered in the debates. For example Lord Goldsmith offered a gloss on the concept of success, being that of “*long-term increase in value*” (Lords Hansard 6 February 2006).

36. The above points must also be considered against the more controversial development in the Act, which is to state various factors that must be considered. These go well beyond simply ensuring the “*long-term increase in value*”.

The Six Principles

37. The six matters that a director must have regard for are (s. 172(1)):

“(a) *the likely consequences of any decision in the long term,*

(b) the interests of the company’s employees,



(c) the need to foster the company's business relationships with suppliers, customers and others,

(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company."

38. A brief consideration of this list makes it plain that the political intention is to engender a more developed form of corporate governance beyond mere shareholder protection. It is also clear that this list is not intended to be definitive.
39. At first, as many commentators have stated, this is quite a startling list of untraditional principles. However, when one considers two matters it becomes clear that it is not perhaps as troubling as it appears. First, it must be remembered that it is envisaged that the main vehicle of enforcing such duties will be the new derivative action. Given the fact that from an early stage the action is under the firm control of the Court it is unlikely that the Courts will willingly countenance these six principles to be abused by a flood of activist shareholders that some commentators have feared will swamp the Companies Court.
40. Second, it is evident that these sorts of issues are not foreign to the Courts. For example, the interests of employees have already been treated as relevant in Company Law and have not caused notable problems (i.e. under s. 309 of the Companies Act 1985). Further, when developing and applying general equitable principles, the Courts will actively consider non-legal issues, such as arguments based on policy, practicality and economics (see *Item Software* at Paras. 63 to 67).

Duty to Exercise Independent Judgment (s. 173)

41. The new duty is simply that a director of a company must exercise independent judgment. A failure to do so can be authorised either by an agreement between the company and a third party or the company's constitution. It is likely that breaches of such a duty will run concurrently with s. 172 (duty to promote success) and s. 175 (conflicts of interest) rather than some freestanding claims given the exceptions.

42. This duty has been well established as part of the common law but is rarely taken as an independent head. The key problem is often to divine what is an "outside interest". The difficult cases tend to sit in a grey area of corporate governance, such as a director who is a bank nominee (*Kuwait Asia Bank EC v. National Mutual Life Nominees Limited* [1990] BCLC 868, PC) or one who is a nominee on a subsidiary's board (*Scottish Co-operative Wholesale Ltd. v. Meyer* [1959] AC 324, HL). It seems likely that appropriately crafted contacts (in the case of a bank's nominee) or constitutions (whether setting up a subsidiary) should go some way to avoiding litigation in these grey areas.

Duty to Exercise Reasonable Care, Skill and Diligence (s. 174)

43. There has been traditionally (or at least before the 1990s) a reluctance of the Courts to interfere where there has been mere negligence (as opposed to breach of fiduciary duty). This reluctance is consistent with the focus of the Courts on issues of good faith when acting in the best interests of the company (see above).

44. The orthodox position has been to ask three questions (*per* Romer J in *Re City Equitable Fire Insurance Co* [1925] Ch 407 at 428-429):
 - 44.1. *What is the relative standard of skill and care?* This was effectively an objective and subjective that directly relates to the capabilities of the particular director in question.

- 44.2. *What degree of diligence is required?* The old paradigm was of a director who sits in his ivory tower (or boardroom) and does not dirty his hands with the day-to-day running of the company. Therefore the level of diligence required was fairly minimal.
- 44.3. *What degree of delegation is permissible?* Delegation even to a significant degree was legitimate, if *bona fides*.
45. This *laissez-faire* approach is now, properly, considered outmoded. The modern approach is both stricter and focused on objective standards. It is expressly said to reflect the more rigorous standards set by s. 214 of the Insolvency Act 1986 (*Re D'Jan of London Ltd* [1993] BCC 646 at 648 Hoffmann LJ).
46. The Government has expressly stated that the new law is modelled on s. 214 of the Insolvency Act 1986. It follows that the particular standards will be developed in line with the interpretation of s. 214.

Duty to Avoid Conflicts of Interest (s. 175)

47. The Act states:
- “A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.”*
48. This includes conflicts that arise from the use or disposition of property, information or opportunity (s. 175(2)). This wide definition reflects the approach of the earlier law (see *IDC v Cooley* [1972] 1 WLR 443). The main change is that the Act allows a more flexible and commercial approach. This is because it does not establish a strict rule. Instead it has a common sense test that asks whether the situation can reasonably be regarded as likely to give rise to a conflict of interest (see s. 175(4)). This is seen as avoiding a risk that the

law might “stifle entrepreneurial activity” (see New EN Para. 342). This test coupled with the opportunity for the authorisation of conflicts (s. 175(5) & (6)) is seen as allowing for the necessary flexibility. The “reasonableness” test has been recognised by the Courts previously, but it has also been emphasised that the principle is a strong objective test of universal and inflexible application (see *Bhullar v. Bhullar* [2003] 2 BCLC 241, CA). It is likely that the precise margins of the new provision will require clarification.

Duty not to Accept Benefits from Third Parties (s. 167)

49. The Act states:

“A director of a company must not accept a benefit from a third party conferred by reason of—

- (a) his being a director, or*
- (b) his doing (or not doing) anything as director.”*

50. This clause in the Act clearly (and expressly; s. 176(4) & (5)) links with the preceding clause and should properly be seen as a derivation of the paramount duty of loyalty. Again, most cases will be self-evident to the lawyer (and layman). For example, it is difficult to see how a bribe from a third party could ever be described as legitimate.

51. There are two grey areas that may have to be considered by the Court. The first is simply when is a benefit a “benefit” under the Act. It maybe argued that there should be a *de minimis* rule. For example, it would make little sense for the Christmas hamper from a valued client to be considered an infringement. A second problem that may arise is the issue of additional directorships. The present position is that holding another directorship is not a breach in itself (see *In Plus Group Ltd v Pyke* [2002] 2 BCLC 201, CA) but it is clear that if it is held contrary to the overriding duty of loyalty then there is a breach (see *British Midland Tool Ltd v Midland International Tooling Ltd* [2003] 2 BCLC 523).

52. It is likely that In order to resolve such issues the terms of s. 176(4) and (5) will be interpreted by the Courts to have the effect of incorporating the reasonableness test from s. 175(4) (with respect to conflicts of interest). It follows that these provisions (read with the general duty of loyalty from s. 172) will allow the Courts to resolve such questions relatively easily.

Duty to Declare Interest in Proposed Transaction/Arrangement with the Company (s. 177)

53. The Act states that:

“If a director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.”

54. This provision essentially replaces s. 317 of the Companies Act 1985. It is more effective because:

54.1. It contains a wider definition than the previous concept of “connected persons”. The director does not have to be a party to the transaction.

54.2. The director must declare the nature and extent of his interest to the other directors. It is not enough for the director to merely state that he has an interest (see New EN Para. 350).

54.3. There is a continuing duty to disclose and correct (s. 177(3)).

54.4. Again, this is properly considered as linked to the provisions dealing with conflicts of interest. This allows some practical common sense to be applied, through the Courts incorporating the reasonableness test from the



provisions dealing with conflicts of interest (reading s. 177(6)(a) and s. 175(4) together).

Other Civil Duties

55. It should be remembered that there are other duties that must be considered in this context. These include:
- 55.1. Limited common law duties to third parties under the doctrine of assumption of responsibility (*Williams v Natural Life* [1998] 1 WLR 830, HL).
 - 55.2. Arguable tortious duties arising from other special relationships, such as where there is close knit relationship between directors and shareholders (see *Coleman v Myers* [1977] 2 NZLR 297).
 - 55.3. Duties to Creditors that may arise under the new Act (s. 172(3)) and the Insolvency Act 1986 s. 214 (see *West Mercia Safetyware Ltd v. Dodd* [1988] BCLC 250 at 252-3; and *Re Horsley & Weight Ltd* [1982] 3 All ER 1045 at 1055).
56. I have pointed out what I believe will be the major features of the new Act for Directors. I have also listed a series of other obligations imposed on Directors to be derived from the existing general law. It is anticipated that these other obligations and duties will continue in parallel with the statutory provisions.



57. This is primarily because the avowed intention of the Government is to codify rather than reform. While this does not seem to be an entirely accurate description of the Act in some respects, it is clear that, with respect to duties that exist outside company law (such as the tortious duty of care), the Government did not intend a revolution.

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