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But, I Am Only A Sleeping Director...

By Joyce Koh

According to the Accounting and Corporate Regulatory Authority (Acra), 10,000 summonses are issued every year to "errant" directors. These are directors who have failed to comply with basic key statutory requirements under the Companies Act, such as holding annual general meetings and the timely filing of annual returns.

Instead of immediately prosecuting these errant directors, Acra now offers first-time offenders the option of attending the Directors Compliance Programme facilitated by the Singapore Institute of Directors (SID). The half-day course briefs directors on the basics of director duties as well as financial reporting, corporate secretarial and other statutory compliance requirements.

At the same time, Acra has also indicated that its enforcement actions for repeat offenders have been stepped up. Last year, in the course of its prosecution of repeat offenders, Acra successfully petitioned the courts for fines that were double the usual amount.

Commissioned by Acra, SID launched the Directors Compliance Programme in late November 2014. At the first session, the auditorium was packed with more than 160 errant directors. Subsequent weekly sessions have also been fully subscribed.

I have met many of these errant directors at the course. They are not purposeful law-breakers. Most of them failed to comply with the law simply because they were ignorant of their statutory duties and responsibilities as a director.

Some of the most common reasons cited by them for non-compliance include:

- I am only a sleeping or nominee director, I am just lending my name to the company.
- I am a non-executive director, I left it to my friend and fellow (executive) director who is running the show.
- I am not involved in the company's administration. Should it not be the job of the CEO or company secretary to handle all these filing matters? They did not tell me anything and I guess I should have taken more seriously the notices that Acra was sending me.

Unfortunately, the law does not distinguish between an "active" and a "sleeping" director - or, for that matter, between an executive and a non-executive director. As long as a person

is a director, he or she has specific duties and responsibilities under the Companies Act. The duty of care and the attendant legal obligations apply equally to all directors: while work can be delegated, responsibility cannot be.

Understanding directors' duties and liabilities

It follows that would-be directors must familiarise themselves with the scope, duties and liabilities of being on a board before committing themselves to the role. This is important because directors' duties extend far beyond just filing annual returns. The consequences of a breach can be much more severe than merely having to attend the Directors Compliance Programme.

The Companies Act has a slew of specific compliance requirements with regard to record keeping, accounts, filing, returns and disclosures. To start, section 157 of the Act imposes a fiduciary duty on directors to advance the interest of the company, and to act honestly and in good faith in exercising his powers. A director, in particular, needs to avoid, and minimally disclose, conflicts of interest.

The consequences of a breach of duty can be both civil and criminal in nature. Different offences carry different levels of punishment. Typically, for most statutory offences, the director could be liable to a fine of up to S\$5,000 or even imprisonment of up to a year. The greater consequence, though, must surely be the adverse impact on a director's reputation and, in some cases, the individual may even be disqualified from becoming a director for a period of time.

Becoming a director

So, why be a director? There are clearly benefits to being a meaningful part of a company. After all, the key role of a director is to help the company progress and create value.

Directorships can be fulfilling and, yes, they can even be a profession. The responsibilities, liabilities and contributions should therefore be viewed holistically from that perspective. For aspiring directors, SID conducts a two-hour "So, you want to be a director" course to help a person make an informed decision on whether and how he should become a director. Having been appointed onto a board, it is important to both understand the context of, and develop the competencies for, operating as a director in that environment. To help in this respect, SID has a curriculum for the various stages of a director's journey, starting with a one-day "Board and Director Fundamentals" course. We welcome directors to all our courses at SID. If nothing else, it shows they are taking such an important role seriously.

In the meantime, directors are well-advised not to disregard that reminder notice from Acra on the deadline to hold the AGM or make the company filing.

The writer is the executive director of the Singapore Institute of Directors. This article first appeared in BTInvest,

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