

THE BRITISH JUDO ASSOCIATION

THE DUTIES OF DIRECTORS : SOME NOTES FOR GUIDANCE

1. INTRODUCTION

The law relating to the duties of Directors of limited companies is both lengthy and complex. These notes are not intended to be a comprehensive statement of the law; they can do no more than give a very brief outline of the responsibilities of present and future Directors of the Association.

To understand fully the duties of Directors, it is necessary to be at least conversant with the corporate structure of the Association and this will be the starting point of these notes. Thereafter, the duties of Directors will be considered in terms of both the general duties imposed by case law and statute law and the specific duties imposed by the Memorandum and Articles of the Association.

2. CORPORATE STRUCTURE

The British Judo Association is a Limited Company. Accordingly, its affairs, and therefore the affairs of its Directors, are regulated by the same body of law that regulates the conduct of all corporate bodies.

Most trading companies are "limited by shares". This means that the Company issues shares to persons who, by the acquisition of such shares, become "members" of the Company. In other words, the "members" are the true legal owners of the Company. The liability of the individual members for the debts of the Company is "limited" to the value of their shareholding. This general principle applies to all companies from the smallest family-run company to the largest multi-national conglomerate.

The issue of shares and their subsequent transfer is, however, an unwieldy business. Accordingly, there is an alternative which is very suited to social and recreational clubs such as the Association. This alternative is known as "the guarantee Company". Instead of issuing shares to the individual members those member's maximum liability for the debts of the company is written into the constitution of the Company. The British Judo Association is a Company limited by guarantee and the maximum liability of the members is one pound.

The members or owners of the British Judo Association are the affiliated clubs. The British Judo Association is therefore owned by its affiliated clubs. Its purpose is to represent what is perceived to be the common interest of those clubs in accordance with the constitution contained in the Memorandum and Articles of Association of the British Judo Association.

A copy of the Memorandum and Articles of Association accompanies these notes and it is in the best interests of all Directors to be familiar with their terms.

3. GENERAL DUTIES OF DIRECTORS

Directors of limited companies are subject to certain general duties which derive from statute and from decided case law. The law relating to limited companies is, in relative terms, quite recent. The first Limited Liability and Companies Acts date to the mid-1840's. In the last 150 years, however, an enormous body of law has been developed by Parliament and the Courts. This complex body of law, however, rests on relatively few fundamental concepts which will now be outlined.

3.1 SOURCE OF DIRECTORS POWERS

A Director is an officer of the Company; he is appointed by the members of that Company (be they shareholders or guarantors) to manage the affairs of the Company on behalf of those members. It is not always feasible for the owners of the Company to assume day to day responsibility for that Company's management; the Directors duty is to discharge this function on behalf of the owners. Directors are appointed and dismissed in accordance with regulations contained in the Companies Acts and the Articles of Association of their Company. The Directors are answerable to the Company's members for their actions when the Company assembles in general meeting, be it an Annual General Meeting or an Extraordinary General Meeting.

Essentially, therefore, Directors are agents of the entire membership of the Company. As such they incur no personal liability in respect of the actions of the Corporate body as a whole (subject to certain statutory exceptions) provided they act within the powers given to them by the general law and by the Memorandum and Articles of Association of the Company. If such authority is exceeded by Directors without ratification by the members in general meeting then the offending Directors may well incur personal liability. It is for this reason that you should be familiar with your Memorandum and Articles of Association!

3.2 FIDUCIARY DUTIES

Directors have a general fiduciary duty. In other words whenever they exercise their powers as Directors, they must do so for the benefit of the Company as a whole. For example, where Directors are called upon to exercise their discretion by voting on a matter which falls to be considered by the Board of Directors, they must exercise their discretion in the best interests of the Company. A Director must never allow any personal interest, or the interest of any single member or group of members, to interfere with his judgments as to the best interests of the Company as a whole. If, for

example, a Director has a strong personal relationship with a member club, any specific interest or purpose of that member club must be subverted to the general interest and benefit of the Association. If the individual member club has any quarrel with any decision taken by the Board of Directors, then it generally has a right of redress through the general meeting.

Furthermore, a Director must never put himself in a position where his duty to the Company and his personal interests are in conflict. Accordingly, a Director must always disclose the fact that he or his spouse have an "interest" in a matter which is being discussed by the Board of Directors. The Company must keep a register of the interests of Directors and their spouses and all Directors must disclose any relationship which might give rise to such an "interest". Most Directors will have a relationship with an affiliated member club; this should certainly be formally disclosed at the outset of the Directorship. Other Directorships should also be disclosed. Where a specific matter falls to be discussed and a Director has an interest in the outcome of the discussion, such an interest should be disclosed at the outset of the discussion. The Director should offer to take no further part in the debate and not to vote on the issue at hand unless the other Directors consent to him so participating.

3.3 DIRECTOR'S BENEFITS

A Director must not make any profit from his appointment unless he is so empowered. Such power may be contained in the Memorandum or Articles of Association of the Company; it may also be contained in a Directors service contract. Where a service contract exists, the Director is an employee of the Company as well as an officer and a whole range of additional powers and duties thereby result. It is not the policy of the British Judo Association to offer service contracts and therefore this position will not arise. Thus the basic proposition applies - no profit must be sought or secured by any Director.

3.4 DUTIES OF SKILL AND CARE

Directors are required to exercise certain standards of care and skill in the performance of their duties. In other words, all decisions of Directors must be reached after proper consideration of the matters at issue. The law is particularly complex in this area and it is certainly true that the standards required of full-time paid executive directors are higher than those required of part-time non remunerated directors. The law accepts that directors may make errors of judgment and they will not be liable for such errors provided that due care was exercised in the decision making process.

4. SPECIFIC DUTIES

The specific duties of Directors are many and various. It is beyond the scope of these notes to make more than passing mention of these duties, the most important of which are as follows:

4.1 DUTY TO PREPARE ACCOUNTS

The Directors of every company must prepare accounts in respect of each twelve month accounting period of the Company. Within ten months of the end of the adopted accounting period, such accounts must be presented to the company in general meeting and must also be delivered to the Registrar of Companies.

4.2 SERVICE CONTRACTS

Copies of all Directors service-contracts (or written details thereof) must be kept at the Company's registered office or principal place of business.

4.3 EMPLOYEES

When exercising their discretion in conducting the affairs of the Company, the Directors are required to take into consideration the interests of all employees of the Company.

4.4 ARTICLES OF ASSOCIATION

Certain specific duties and obligations are imposed and all Directors should familiarise themselves with these duties.

5. CONCLUSION

The British Judo Association stress once again that these notes are not to be regarded as a comprehensive statement of the law relating to the duties of Directors. These notes are issued for guidance only and whilst they are believed to be substantially correct they do not obviate the need for Directors to seek their own independent legal advice if they consider this to be appropriate. These notes form no part of the Memorandum or Articles of Association of the British Judo Association; nor do they form part of any contract between the British Judo Association and its Directors, agents, employees or shareholders. No liability is accepted by the British Judo Association arising out of the contents of these notes.