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Legal Position of Directors in India

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A Director is an agent of the Company for the conduct of the business of the company. The Directors of the subsidiary of a foreign company are not on any separate footing. As agents or officers of the Company, directors have a fiduciary relation with the Company and its shareholders. Directors are bound to use fair and reasonable diligence in discharging the duties and to act honestly, and with such care as may be reasonably expected from, having regard to their knowledge and experience. Express liability would usually arise only when a director has personally guaranteed the performance of a contract. As far as fiduciary duties are concerned, any breach by directors would make them liable. Directors would be liable for negligence, breach of trust, misfeasance, and ultra vires actions and for applying the funds of the company for such acts.

The Articles of Association of the Company may provide for the delegation of functions to the extent to which it is permitted under Indian Companies laws. In certain cases, a director might be in breach of duty if he delegates to others, the matters for which the Board of Directors as a whole had to take responsibility. Directors are ultimately entrusted with the management of the company, they cannot entirely divest themselves of their responsibility by delegation.

In India, Directors are required to ensure various compliances under the Indian Companies Act. However, for most of these responsibilities can be shifted to any other officer of the company, except which can not be delegated like, disclosure of interest in transaction being entered.

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into by the company, disclosure of shareholdings in the company, reduction of capital below statutory limit, liabilities arising by virtue of holding an office in the company, Board’s report, declaration of solvency.

Indian sales tax and income tax laws provides, if a private company is wound up and the tax assessed cannot be recovered, then directors of a private company can be held liable for the payment of such tax, if the non recovery is attributable to any gross neglect, misfeasance, or breach of duty on his part. Similarly, under the Central Excise and the Customs Laws, if any contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, he shall be liable to be proceeded against and punished accordingly.

Indian industrial laws provides a general rule in case an offence is committed by a company, then, every director, manager, secretary, agent or other officer or person in the management is liable for the offence, unless he proves that he had no knowledge. However certain laws make a director primarily liable in case of any breach or default, as under the Factories Act, 1948, an occupier (the person who has ultimate control over the affairs of the factory and in the case of a company, any one of the directors is deemed to be the occupier) of a factory is responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation, as he has ultimate control over the factory. Courts of India have view that only a director can be the occupier of the factory and responsible for the conduct of business of the establishment.
Indian Environment Laws provides for the protection and improvement of environment and lays down specific guidelines with respect to handling of hazardous substances and emission norms for industrial undertakings operations and process and any violation of the provisions amounts to an offence thereunder. Making every person directly in charge of, for the conduct of the operations and having control liable. It is possible to delegate this responsibility however if it can be established that any omission has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, he will be liable to be proceeded against and punished accordingly.

Conclusion:

The liability of a director arising under the above and any other laws can be mitigated by delegating the responsibility to some other officer of the company, provided however the director could be held liable if his knowledge, consent or attribution to the offence is established.

The company in respect of the negligence, default, breach of duty, misfeasance or breach of trust may indemnify director, if he has acted honestly and reasonably in discharge of his duties. In principle, the company is bound to indemnify the director against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

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