WERKSMANS ATTORNEYS

LEGAL UPDATE

Risk Mitigation for Boards of Directors – Responsibilities, Duties and Liabilities of Directors Guide

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As the old adage, popularised following its appearance in Stan Lee's Marvel Comics, goes "with great power, comes great responsibility". This saying is no less true in relation to companies' boards of directors.

The business and affairs of a company are managed under the direction of its board of directors. As such, significant responsibilities rest on directors' shoulders – a fact which cannot be ignored!

Under the Companies Act 71 of 2008, a high standard of conduct is expected of individual directors, who may be held personally liable in instances where they fail to act with the required degree of care and skill. For this reason, it is imperative for directors to properly consider, and be aware of, the relevant legal provisions applicable to them, with the aim of ensuring compliance and avoiding falling foul of the law.

At the same time, however, the Companies Act also makes certain statutory protections and safeguards available to directors, which may allow directors to avoid personal liability, in appropriate circumstances. Directors would be well advised to fully appreciate the extent of such protections and safeguards and to understand when they may apply.

Given the importance of what is set out above, Eric Levenstein, Head of Business Rescue, Nastascha Harduth, Director, and Malachizodok Mpolokeng, Associate, prepared a comprehensive booklet setting out risk mitigation strategies for boards of directors. Additionally, we also succinctly set out certain of the most important responsibilities, duties, and liabilities of directors, in terms of the Companies Act, and with reference to the King IV Report.

Download the Werksmans Director's Liability Booklet: Risk Mitigation for Board of Directors 2022