

## Are Your Directors Human?

Does your company have corporate directors? If so, you might want to read on... Some businesses have sought to mitigate the risks of potential personal liability for directors by interposing a sole “corporate director” – commonly a limited liability company – between individual (human) directors and the subject (trading) company. The individual directors are then appointed directors of the corporate director.

If you have such an arrangement in place, you need to be aware that the arrangement may not in fact protect the individual directors and that, from 1 October 2010, all companies (including dormant companies) must have at least one human director. Taking each of these points:

### 1. The arrangement may not protect the individual directors.

A recent court decision in England has confirmed that individual directors of corporate directors must be careful not to overstep the confines of their role as a member of the board of the corporate director. If an individual director steps outside the confines and acts directly in relation to the affairs of the subject company – as if he or she were a director of subject company – the courts can decide that he or she is (or was), in legal terms, a director of the subject company

So, what can individual directors of a corporate director do to protect themselves from personal liability? There are no hard and fast rules as to keeping within such confines – this will always depend on the circumstances – but, as a practical matter, keeping proper board minutes of decisions made by the board of the corporate director, and agreeing (and documenting) who is doing what on behalf of the corporate director, could help keep the roles distinct.

It would also be sensible for individual directors to be clear about the capacity in which they are acting – for example, by signing off letters and documents of the subject company: “signed by [name of the individual director] for and on behalf of [Corporate Director] Ltd, a director of [subject company] Ltd”.

### 2. From 1 October 2010 all companies (including dormant companies) must have at least one human director.

For most companies, this has been a requirement since 1 October 2008, but some companies formed before that date were granted a period of grace until 1 October 2010. Companies in default may be subject to fines for both the company and directors in default, with the possibility of additional daily default fines being issued.

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