



N A B A R R O
CLARITY MATTERS

Did you know that...?

Corporate newsletter
15 May 2007

Good morning.

Welcome to our regular bulletin, which highlights key legal developments affecting companies and their advisers.

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EQUITY CAPITAL MARKETS

MAJOR SHAREHOLDING NOTIFICATIONS FOR OFFICIAL LIST AND AIM – OUR UPDATED GUIDE TO REFLECT LIST! 14 UPDATED APRIL 2007

We have updated our user friendly reference guide to the essentials of this regime to reflect the UKLA's updated List! issue 14, published on 27 April.

Please click [here](#) to read our updated guide which is on our website.

List! Issue No. 14 Updated – April 2007 is at: http://www.fsa.gov.uk/pubs/ukla/list14_apr07.pdf.

COMPANIES

COMPANIES ACT 2006 – UPDATE OF OUR INTRODUCTION TO INCLUDE IMPLEMENTATION DATES

Parts of the Companies Act 2006 are now in force, having been implemented on 8 November 2006, 1 and 20 January and 6 April 2007. The Government announced in February the dates for when the different parts of the rest of the Act will be brought into force: 1 October 2007 and 6 April and 1 October 2008.

For more detail, please click [here](#) to read our notes on the changes made and to be made to company law by the Act. These include the dates for when those changes have taken, or are to take, place.

THIRD PARTIES ON NOTICE CANNOT RELY ON THE OSTENSIBLE AUTHORITY OF DIRECTORS

G, a director of Wrexham Association Football Club Limited (the Club), acting on behalf of the Club, entered into a transaction with H involving a lease of the Club's football ground. However, G had a personal interest in arranging the transaction so that the ground could be developed by a separate joint venture between himself and H.

The Club's board was unaware of G's joint venture with H and had not delegated to G the power to approve the transaction. No board resolutions authorising any step of the transaction had been passed.

It was held at first instance that G was in breach of his fiduciary duties to the Club not to profit from his fiduciary position and to avoid any conflict between his fiduciary position and his personal interests; and that H had been aware of the circumstances.

The principle was upheld by the Court of Appeal that a third party, aware that a director is entering into a transaction on behalf of a company in breach of his fiduciary duty, cannot rely on the director's ostensible authority.

The Court of Appeal would not allow H to invoke any of the following rules often relied on by third parties:

- A person dealing with a company in good faith can assume that acts within the company's constitution and powers have been properly and duly performed and is not bound to enquire whether acts of internal management have been regular (the rule in *Turquand's case*).
- In favour of a person dealing with a company in good faith, the power of the board to bind the company, or to authorise others to do so, is deemed to be free of any limitation under the company's constitution (section 35A Companies Act 1985).

- A party to a transaction with a company is not bound to enquire as to the capacity of the company or as to any limitation on the power of the board to bind the company or authorise others to do so (section 35B 1985 Act).
- In favour of a “purchaser” (a purchaser in good faith and for valuable consideration), a document is deemed to have been duly executed by a company if it purports to have been signed by a director and the secretary or by two directors (section 36 A 1985 Act).

In these circumstances, H should have enquired as to the authority of the persons acting on behalf of the company in effecting the transaction. He had not satisfied any of the requirements of good faith.

Comment: This case is a reminder to a third party when dealing with a company, that if it suspects any wrong doing on the part of a director, it should ask to see all relevant minutes showing that the transaction had been authorised and approved by both the board and shareholders after full disclosure of all the details.

Source: *Wrexham Association Football Club Ltd (In Administration) -v- Crucialmove Ltd* [2006] EWCA Civ 237

Referred to: *Rolled Steel Products Holdings Ltd -v- British Steel Corporation* [1986] Ch 349; *Royal British Bank -v- Turquand* (1856) 6 E & B 327.

COMPETITION

INTERNATIONAL CRIMINAL CARTEL INVESTIGATION INTO MARINE HOSES

The UK, EU and US competition authorities have recently carried out coordinated "dawn raids" against a number of suppliers in the marine hose industry suspected of operating a cartel. This is the first coordinated criminal cartel investigation, which included raids on domestic premises in the UK.

Please click [here](#) to read our briefing on this investigation which is on our website.

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If so, please reply to this email and give us the name, job title, company name, postal address, phone number and email address of the person you wish to add.

WOULD YOU LIKE TO SEE SOME OF OUR PREVIOUS PUBLICATIONS?

To see some of our previous "Did you know that...?" corporate bulletins and their accompanying publications, most of which are published on our website, please click on their names below.

[Did you know that ...? 17 April 2007](#)

[Private Equity briefing: Are you seeking to raise private equity finance?](#)

CONTACT

If you would like any further information on the above issues, you are welcome to contact either of us, or your usual contact at Nabarro.

Nikki Mallett, Editor

T +44 (0)20 7524 6835 n.mallett@nabarro.com

Graham Stedman, Partner

T +44 (0)20 7524 6449 g.stedman@nabarro.com

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London

Lacon House, 84 Theobald's Road,
London WC1X 8RW
T +44 (0)20 7524 6000
F +44 (0)20 7524 6524

Sheffield

1 South Quay, Victoria Quays,
Sheffield S2 5SY
T +44 (0)114 279 4000
F +44 (0)114 278 6123

Brussels

209A Avenue Louise,
1050 Brussels, Belgium
T +32 2 626 0740
F +32 2 626 0749

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