

## Indemnities and insurance for directors and employees

**DLA Piper LLP** - Rachel Taylor, Jonathan Pitts and Hamish Anderson

August 31 2017

Company directors and employees must be aware of their rights and the requirements that relate to companies indemnifying, and providing insurance for their actions as directors or employees. Simple misunderstandings of the rules surrounding indemnities and insurance can result in directors and employees being exposed to liabilities without any cover.

Companies will often provide indemnities and insurance to their directors and certain employees (generally senior company employees) as a way to compensate for losses they may suffer as the result of certain acts or omissions in their capacity as a director or employee (not including criminal liability or for breaches of good faith). Having sufficient cover for their actions as director or employee will typically be a prerequisite before that person will accept an appointment to act.

However, indemnities and insurance will not be enforceable unless:

- The company providing the indemnities and insurance has a constitution
- The constitution expressly authorises the provision of the indemnities and insurance

For insurance to be properly effected (and paid for) by the company, the company will also need to have the directors certify that effecting the insurance is fair to the company. The existence of such insurance and/or indemnities must be entered into the company's interests register for the relevant director(s).

Failing to comply with the above requirements can result in an indemnity given in favour of a director or employee being declared void, or the director or employee becoming personally liable for the effecting of the insurance (unless that person can prove the insurance was fair to the company at the time of the policy being effected).

It therefore is extremely important to check the company's constitution to confirm that the company has the correct authorisation, before offering the comfort of indemnities and / or insurance to a director or employee. If the company does not have a constitution then one should be adopted (with appropriate indemnity and insurance provisions) as soon as possible.