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SOME POINTS ON FIDUCIARY DUTIES IN CORPORATE LAW

Ibrokhimov Azimjon Abdumomin ugli,
The lecturer of Civil Law Department of Tashkent State University of Law

ABSTRACT

In the intricate world of corporate governance, the role of a director is paramount. Directors are entrusted with the responsibility of steering a company towards success while safeguarding the interests of its shareholders. This fiduciary duty forms the bedrock of their role, outlining a code of conduct that demands unwavering loyalty, care, and integrity. This article delves into the fiduciary duties of company directors, exploring their significance, components, and the implications of breaches.

A fiduciary relationship is characterized by trust and confidence, where one party (the fiduciary) is obligated to act in the best interests of another (the beneficiary). Company directors are quintessential fiduciaries, owing their allegiance to shareholders. Fiduciary duties impose stringent obligations on directors, necessitating actions that prioritize the company's welfare above personal gains.

Keywords: *fiduciary duties, director liability, corporate governance, duty of care, duty of loyalty, accountability, stakeholder interests, conflicts of interest, decision-making, independent judgment, insider trading, corporate opportunities*

АННОТАЦИЯ

В сложном мире корпоративного управления роль директора является первостепенной. На директоров возложена ответственность вести компанию к успеху, защищая интересы ее акционеров. Эта фидуциарная обязанность составляет основу их роли, обрисовывая в общих чертах кодекс поведения, который требует непоколебимой лояльности, заботы и честности. В этой статье рассматриваются фидуциарные обязанности директоров компаний, исследуется их значение, компоненты и последствия нарушений.

Фидуциарные отношения характеризуются доверием и доверием, когда одна сторона (доверенное лицо) обязана действовать в интересах другой стороны (бенефициара). Директора компании являются типичными фидуциариями из-за своей преданности акционерам. Фидуциарные обязанности налагают на директоров строгие обязательства, требуя действий, которые ставят благополучие компании выше личной выгоды.

Ключевые слова: *фидуциарные обязанности, ответственность директора, корпоративное управление, обязанность соблюдать*

осторожность, обязанность лояльности, подотчетность, интересы стейкхолдеров, конфликты интересов, принятие решений, независимое суждение, инсайдерская торговля, корпоративные возможности.

INTRODUCTION

Corporate law serves as the framework that governs the intricate relationships between various stakeholders within a company. At the heart of this legal structure lies the concept of fiduciary duties, which directors owe to the company and its shareholders. Fiduciary duties act as a moral compass, guiding directors in their decision-making and ensuring that their actions prioritize the best interests of the company. This article delves into the role of fiduciary duties of directors in corporate law, highlighting their significance, legal implications, and the broader impact on corporate governance.

Fiduciary duties in corporate law establish the ethical and legal obligations that directors must uphold. These duties reflect the trust placed in directors by shareholders, stakeholders, and the public at large. While directors are responsible for making strategic decisions, they are expected to exercise their powers with care, loyalty, and good faith. The significance of fiduciary duties can be understood through the following key aspects:

Shareholder Protection: Fiduciary duties ensure that directors act in a manner that maximizes shareholder value. This involves making decisions that contribute to the company's long-term success and financial stability, rather than pursuing short-term gains that might benefit individual directors.

Conflict Avoidance: Directors must actively avoid conflicts of interest that could compromise their ability to make impartial decisions. This requirement maintains the integrity of corporate decision-making processes and prevents self-serving actions.

Transparent Governance: Fiduciary duties demand transparency in decision-making and information disclosure. Directors are obligated to provide accurate and timely information to shareholders, regulators, and other stakeholders.

Corporate Reputation: Upholding fiduciary duties enhances a company's reputation and credibility in the market. Directors who act with integrity and transparency foster trust among investors, customers, and the public [1].

Components of Fiduciary Duties

Fiduciary duties encompass several components, each with its unique implications and expectations:

Duty of Care: Directors are required to act with care, diligence, and expertise that a reasonable person with their qualifications and experience would exercise in similar circumstances. This includes making informed decisions, conducting due diligence, and staying updated on industry trends. The duty of care is another fundamental responsibility that company directors are required to uphold. This duty mandates that directors make informed and prudent decisions while exercising reasonable care, skill, and diligence. Directors are expected to act with the same level of care that a reasonably prudent person would exhibit in similar circumstances. Key Aspects of the Duty of Care:

Informed Decision Making. Directors are required to possess a reasonable understanding of the company's operations, financial status, and relevant industry dynamics. They should use this knowledge to make well-informed decisions that contribute to the company's success. Directors are expected to gather relevant information, analyze options, and make decisions based on a thorough understanding of the company's operations, industry trends, and potential risks.

Diligence. Directors must actively engage in board discussions, review materials, and stay informed about the company's affairs. Their involvement is crucial in ensuring that the decisions made are well-considered and aligned with the company's goals.

Independent Judgment. While directors can seek advice and input from others, they should exercise independent judgment when making decisions. Relying solely on others' opinions without personal assessment can be seen as a breach of the duty of care.

Competence and Skill. Directors should possess the knowledge and expertise necessary to understand the complexities of the business. If they lack expertise in a particular area, they are expected to seek advice from qualified professionals. Examples Illustrating the Duty of Care:

Neglecting Financial Oversight. A director fails to review financial statements and reports provided by the CFO, leading to the discovery of serious financial discrepancies later on. This demonstrates a breach of the duty of care, as the director did not exercise reasonable diligence.

Failure to Understand Industry Trends. A director of a technology company fails to stay informed about emerging trends and innovations in the tech sector. Consequently, the company falls behind competitors due to the director's lack of knowledge, highlighting a breach of the duty of care.

Inadequate Due Diligence. A director supports a major acquisition without conducting proper due diligence or seeking expert advice. The acquisition results in substantial losses for the company, revealing a failure to exercise reasonable care and diligence.

Ignoring Regulatory Compliance. A director ignores updates in regulatory requirements and fails to implement necessary changes to ensure the company's compliance. This oversight exposes the company to legal risks and demonstrates a breach of the duty of care.

Lack of Expert Consultation. A director, who lacks expertise in cybersecurity, fails to seek advice from cybersecurity professionals despite [2].

Duty of Loyalty: The duty of loyalty obligates directors to act in the best interests of the company and its shareholders. This involves avoiding conflicts of interest and self-dealing, as well as disclosing any potential conflicts transparently. The duty of loyalty is a fundamental ethical and legal obligation that company directors owe to the company and its shareholders. It requires directors to act in the best interests of the company, avoid conflicts of interest, and put the company's welfare before their own personal interests. This duty ensures that directors make decisions that prioritize the success and long-term sustainability of the company. Key Elements of the Duty of Loyalty:

Acting in the Company's Best Interests: Directors are entrusted with making decisions that promote the company's success, growth, and long-term sustainability. They should always consider how their choices impact the company as a whole.

Avoiding Conflicts of Interest: Directors must be vigilant in identifying and disclosing any situations where their personal interests could conflict with those of the company. If a conflict arises, directors should abstain from participating in related decisions.

Avoiding Self-Dealing: Directors are prohibited from using their position to gain personal benefits at the expense of the company. This includes situations where a director approves transactions or contracts that primarily benefit themselves or their associated parties.

Misappropriation of Opportunities: Directors should present any business opportunities that arise within the scope of the company's operations to the company itself. Failing to do so and exploiting such opportunities personally breaches the duty of loyalty.

Confidentiality: Directors are expected to maintain confidentiality regarding sensitive company information. This includes not disclosing insider information for personal gain or sharing information that could harm the company's competitive advantage [3]. Examples of breaches of the duty of loyalty include:

Self-Dealing. A director using their position to make decisions that benefit themselves or their related parties rather than the company. For instance, a director might approve a contract that benefits their own business at the expense of the company.

Competing Ventures. A director engaging in a business activity that directly competes with the company without proper disclosure and approval. This creates a conflict of interest where the director's personal interests clash with the company's interests.

Misappropriation of Opportunities. Directors are obligated to present any business opportunities that arise in the scope of the company's operations to the company itself. Failing to do so and taking advantage of those opportunities personally can be a breach of loyalty.

Insider Trading. Using non-public information about the company to make stock trades for personal gain is a breach of both loyalty and legal obligations.

Diversion of Corporate Assets: Directors should not use company assets or resources for their personal use or the use of others without proper authorization.

Excessive Compensation. Approving compensation packages that are excessive and not justified can be seen as prioritizing personal gain over the company's financial well-being. To avoid breaching the duty of loyalty, directors should:

Disclose any potential conflicts of interest and recuse themselves from decision-making where conflicts arise.

Act honestly and in good faith in the best interests of the company.

Maintain confidentiality of sensitive company information.

Not use their position for personal gain.

Make decisions based on informed judgment and independent research.

Although some consider the duty of good faith as an element that falls within the framework of the duty of loyalty, others view this aspect as a separate standard [4].

Duty of Good Faith: Directors must act honestly, in good faith, and without any ulterior motives. Misrepresentation, manipulation, or dishonesty in decision-making breaches this duty.

The duty of good faith, often referred to as the duty of good faith and fair dealing, is a crucial aspect of a director's responsibilities within a company. This duty requires directors to act honestly, transparently, and with integrity in all their dealings, ensuring that their actions are aligned with the best interests of the company and its stakeholders. Key Elements of the Duty of Good Faith:

Honesty and Integrity: Directors are expected to act with honesty, sincerity, and ethical behavior in all their actions and decisions. This means avoiding deceptive practices, misrepresentations, or any form of dishonesty that could harm the company.

Transparency: Directors should provide clear and accurate information to fellow directors, shareholders, and stakeholders, enabling informed decision-making and fostering trust. This includes sharing both positive and negative developments relevant to the company.

Avoiding Self-Interest: Directors must avoid pursuing personal gains or benefits at the expense of the company. Decisions and actions should be made in a manner that benefits the company as a whole rather than serving the director's own interests [5]. Examples Illustrating the Duty of Good Faith:

Full Disclosure. A director is aware of a potential lawsuit against the company but fails to inform the board of the legal risks involved. This lack of transparency breaches the duty of good faith by withholding crucial information that could impact the company's decision-making process.

Honest Reporting. During a board meeting, a director candidly reports the challenges faced by the company in a new market expansion, even though it reflects negatively on their own department's performance. This honest and transparent communication reflects the director's commitment to the duty of good faith.

Conflict Resolution. A director recognizes a potential conflict of interest arising from a supplier's offer of personal benefits. The director promptly informs the board of the conflict and recuses themselves from any decisions related to the supplier, ensuring compliance with the duty of good faith.

Ethical Decision-Making. A director faces pressure to approve a questionable financial transaction that could artificially inflate the company's short-term profits. The director refuses to authorize the transaction, prioritizing the company's long-term reputation and stability over immediate gains, thus exemplifying the duty of good faith.

Acting in the Company's Best Interest. A director advocates for investing in sustainable practices even if they involve higher upfront costs. Despite potential initial financial constraints, this decision aligns with the director's commitment to the company's long-term success and demonstrates good faith [6].

The duty of good faith emphasizes the importance of ethical conduct, honesty, and a commitment to the best interests of the company. Directors who uphold this duty contribute to a culture of trust, integrity, and responsible governance, fostering a positive environment within the organization and enhancing its overall reputation. Breaches of the duty of good faith can lead to legal actions, reputational damage, and erosion of stakeholder trust.

Based on the presented information, it can be observed that, in fact, the content of this standard closely intertwines with the content of the duty of loyalty. Therefore, in our opinion, the fiduciary duties of a company director include the duty of care and the duty of loyalty, encompassing many aspects of their content [7].

To and before whom are fiduciary duties imposed on in corporate law

In corporate law, fiduciary duties are typically imposed on certain individuals who hold positions of trust and responsibility within a company. The specific individuals who are subject to fiduciary duties may vary depending on the jurisdiction and the corporate structure, but here are some common examples:

Directors: Directors of a corporation, whether they are executive directors or non-executive directors, generally owe fiduciary duties to the company and its shareholders. These duties typically include the duty of loyalty, duty of care, and duty of good faith.

Officers: Officers of a corporation, such as the CEO, CFO, or COO, are often subject to fiduciary duties. They have a responsibility to act in the best interests of the company and its shareholders, and to exercise their powers and perform their duties with care, diligence, and loyalty.

Majority Shareholders: In certain cases, majority shareholders may owe fiduciary duties to minority shareholders. This is especially true when the majority shareholder exercises control or influence over the affairs of the company and has the ability to impact the rights and interests of minority shareholders [8].

Trustees: In cases where a company has a trust structure, the trustees who hold legal ownership of the company's assets on behalf of the beneficiaries may have fiduciary duties towards those beneficiaries.

It's important to note that the specific duties imposed and the individuals subject to fiduciary duties can vary depending on the legal jurisdiction and the specific circumstances. Corporate laws can differ between countries, so it's always advisable to consult the relevant laws and regulations applicable in a specific jurisdiction for a comprehensive understanding of who is subject to fiduciary duties.

Fiduciary duties in some countries.

The United Kingdom: in the United Kingdom, the fiduciary duties of company directors are primarily outlined in the Companies Act 2006, as well as in common law principles and court decisions. These duties are central to directors' roles and responsibilities in ensuring that they act in the best interests of the company and its shareholders. The main fiduciary duties of directors under UK corporate law include:

Duty to Act in Good Faith and Promote the Success of the Company: Directors must act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its shareholders as a whole. This includes considering the long-term consequences of their decisions, the company's reputation, the interests of employees, the impact on the community and environment, and other relevant factors.

Duty to Exercise Independent Judgment: Directors must exercise independent judgment and avoid being influenced by external pressures or personal interests when making decisions on behalf of the company.

Duty to Exercise Reasonable Care, Skill, and Diligence: Directors must exercise the care, skill, and diligence that would be expected of a reasonably diligent person with the general knowledge, skill, and experience that can reasonably be expected of someone in their position.

Duty to Avoid Conflicts of Interest: Directors must avoid situations where they have a direct or indirect interest that conflicts or could conflict with the interests of the company. If such a conflict arises, directors should declare it and seek approval from the board.

Duty Not to Accept Benefits from Third Parties: Directors must not accept benefits from third parties conferred by reason of their being directors or doing (or not doing) anything as a director.

Duty to Declare Interests in Proposed Transactions or Arrangements: Directors must declare to the other directors any interest they have in a proposed transaction or arrangement with the company.

Duty to Act Within Powers: Directors must act in accordance with the company's constitution and only exercise their powers for the purposes for which they are conferred.

Duty to Promote the Company's Success: Directors should have regard to the impact of the company's operations on the community and environment, as well as the company's reputation.

It's important to note that these duties apply to all directors of companies registered in the UK, regardless of the company's size or structure. They are designed to ensure that directors act with integrity, transparency, and in the best interests of the company and its stakeholders [9].

Germany: In German corporate law, the rules regarding fiduciary duties are primarily outlined in the German Stock Corporation Act (Aktiengesetz) and the German Limited Liability Company Act (Gesetz betreffend die Gesellschaften mit beschränkter Haftung). Here are some key provisions:

Duty of Loyalty: Directors and officers of German corporations (Aktiengesellschaften) and limited liability companies (Gesellschaften mit beschränkter Haftung) have a duty of loyalty (Treuhandpflicht) towards the company. They are required to act in the best interests of the company and its shareholders.

Duty of Care: Directors and officers must exercise the care of a prudent and diligent businessperson (Sorgfalt eines ordentlichen Geschäftsleiters). They are expected to make informed decisions, conduct due diligence, and act in a manner that a reasonably diligent executive would exercise under similar circumstances.

Conflicts of Interest: Directors and officers must avoid conflicts of interest (Interessenkollisionen) between their personal interests and the interests of the company. If a conflict arises, they are generally required to disclose it to the supervisory board or shareholders and obtain their approval.

Corporate Opportunities: Directors and officers must not exploit business opportunities that rightfully belong to the company without proper authorization. They are obligated to offer such opportunities to the company first.

Duty of Confidentiality: Directors and officers have a duty to maintain confidentiality (Verschwiegenheitspflicht) regarding the company's affairs, trade secrets, and other confidential information. They must not disclose or misuse such information for personal gain or to the detriment of the company.

Shareholder Rights: Majority shareholders are generally not subject to fiduciary duties in relation to minority shareholders. However, they must not misuse their power to the detriment of minority shareholders or violate the principle of equal treatment (Gleichbehandlungsgrundsatz).

It's important to note that the rules and principles of German corporate law are interpreted and applied by the courts and can be further supplemented by the company's articles of association (Satzung) and individual contractual agreements. Therefore, for specific legal advice or to fully understand the intricacies of German corporate law, it is advisable to consult with a qualified legal professional.

In German corporate law, the supervisory board (Aufsichtsrat) of a German stock corporation (Aktiengesellschaft) plays an important role in the governance of the company. While the management board (Vorstand) is responsible for the day-to-day management of the company, the supervisory board oversees and monitors their activities. The members of the supervisory board are indeed subject to fiduciary duties.

The fiduciary duties of supervisory board members in Germany include:

Duty of Loyalty: Supervisory board members must act in the best interests of the company and its shareholders. They are expected to prioritize the collective interests of the company and exercise their powers for the benefit of the company.

Duty of Care: Supervisory board members are required to exercise the care of a prudent and diligent businessperson (Sorgfalt eines ordentlichen Aufsichtsratsmitglieds). They must be well-informed, actively participate in board meetings, and contribute their expertise to make informed decisions in the best interests of the company.

Confidentiality: Supervisory board members have a duty to maintain confidentiality regarding the company's affairs, trade secrets, and other confidential information. They must not disclose or misuse such information for personal gain or to the detriment of the company [10].

Conflict of Interest: Like directors and officers, supervisory board members must avoid conflicts of interest (Interessenkollisionen) between their personal interests and the interests of the company. If a conflict arises, they are generally required to disclose it to the board and abstain from participating in decisions where they have a personal interest.

The specific fiduciary duties of supervisory board members, as well as their powers and responsibilities, are further elaborated in the German Stock Corporation Act (Aktiengesetz) and the company's articles of association (Satzung).

The composition and role of the supervisory board may vary depending on the size and type of the company. Additionally, specific legal advice should be sought to understand the intricacies of individual cases and ensure compliance with the applicable laws and regulations.

France: in France, the rules regarding fiduciary duties in corporate law are primarily governed by the French Commercial Code (Code de commerce) and the case law established by French courts. Here are some key provisions:

Duty of Loyalty: Directors and officers of French companies owe a duty of loyalty (devoir de loyauté) to the company. They are required to act in the best interests of the company and its shareholders, and to prioritize the collective interest of the company over their personal interests.

Duty of Care: Directors and officers must exercise the care and diligence (devoir de diligence) of a reasonably prudent person in similar circumstances. They are expected to make informed decisions, conduct proper due diligence, and act with the level of skill and competence expected of their positions.

Conflict of Interest: Directors and officers must avoid conflicts of interest (conflit d'intérêts) between their personal interests and the interests of the company. If a conflict arises, they are generally required to disclose it to the board of directors and abstain from participating in decisions where they have a personal interest, unless authorized by the board.

Corporate Opportunities: Directors and officers have a duty not to divert corporate opportunities (opportunités d'affaires) for their personal gain, unless explicitly authorized to do so by the company. They must offer such opportunities to the company first [11].

Duty of Confidentiality: Directors and officers have an obligation to maintain confidentiality (devoir de confidentialité) regarding the company's affairs, trade secrets, and other confidential information. They must not disclose or misuse such information for personal gain or to the detriment of the company.

Shareholder Rights: Majority shareholders are generally not subject to fiduciary duties in relation to minority shareholders. However, they must not abuse their power to the detriment of minority shareholders or violate the principle of equal treatment (principe d'égalité de traitement).

It's important to note that the interpretation and application of fiduciary duties in France may vary based on case law and the specific circumstances of each case. Additionally, the company's articles of association (statuts) and individual contractual agreements may provide further guidance on the fiduciary duties of directors and officers. For specific legal advice or a comprehensive understanding of French corporate law, it is recommended to consult with a qualified legal professional.

In France, companies can choose between different corporate governance structures, and the existence of a supervisory board depends on the specific legal form of the company. Here are the two main forms of companies in France and their corresponding governance structures:

Société Anonyme (SA): A Société Anonyme is a public limited company that may have a two-tier governance structure, consisting of a management board (Conseil d'Administration) and a supervisory board (Conseil de Surveillance). However, it's important to note that the two-tier structure is not mandatory for all SA companies, and smaller companies may choose to have a simplified governance structure with only a management board.

Management Board (Conseil d'Administration): The management board is responsible for the day-to-day management of the company's operations. Its members are appointed by the supervisory board or by the shareholders in a general meeting.

Supervisory Board (Conseil de Surveillance): The supervisory board's primary role is to oversee and monitor the management board's activities. It typically consists of non-executive members who represent the shareholders' interests and ensure the company's long-term strategic direction. The supervisory board members are elected by the shareholders in a general meeting.

Société à Responsabilité Limitée (SARL): A Société à Responsabilité Limitée is a private limited liability company that does not typically have a supervisory board.

The management and decision-making authority in an SARL are vested in the general meeting of shareholders and/or the managing partners (gérants). The managing partners, who may also be shareholders, are responsible for the day-to-day management and operations of the company.

It's important to note that there are other legal forms of companies in France, such as sole proprietorships (entreprise individuelle) and partnerships (sociétés de personnes), which have different governance structures.

When it comes to fiduciary duties, the directors and managers (such as managing partners) of French companies, regardless of their governance structure, are generally subject to fiduciary obligations, including the duty of loyalty, duty of care, and duty of confidentiality. These duties are outlined in the French Commercial Code (Code de commerce) and are interpreted through case law.

For specific information about the governance structure and fiduciary duties of a particular company in France, it's advisable to refer to its articles of association (statuts) and consult with a qualified legal professional familiar with French corporate law.

In France, the fiduciary duties that are typically associated with the supervisory board are primarily relevant to the specific governance structure of the Société Anonyme (SA) with a two-tier system. The Société à Responsabilité Limitée (SARL) and other forms of companies in France do not typically have a supervisory board.

In the case of a two-tier system SA, the fiduciary duties are primarily imposed on the members of the management board (Conseil d'Administration) rather than the supervisory board (Conseil de Surveillance). The supervisory board's role is to oversee and monitor the management board's activities, but its members are not generally subject to the same fiduciary duties.

However, the supervisory board members still have obligations and responsibilities regarding their supervisory role, such as:

Duty of Oversight: The supervisory board members have a duty to oversee the activities of the management board, ensuring that they are carried out in compliance with legal requirements, the company's articles of association, and the interests of the shareholders.

Duty of Due Diligence: Supervisory board members are expected to exercise due diligence in fulfilling their supervisory responsibilities, including attending board meetings, reviewing reports, asking relevant questions, and seeking necessary information.

Duty of Confidentiality: Like other board members, supervisory board members have a duty to maintain confidentiality regarding the company's affairs, trade secrets, and other confidential information.

While the specific provisions that establish the responsibilities of the supervisory board members can be found in the company's articles of association (statuts) and internal regulations, the fiduciary duties associated with loyalty and care are primarily imposed on the members of the management board in the context of a two-tier system SA [12].

It is important to consult the specific provisions of the relevant company's articles of association to understand the precise obligations and responsibilities of the supervisory board members in each individual case. Seeking advice from a qualified legal professional with expertise in French corporate law would provide the most accurate guidance.

CONCLUSION

The fiduciary duties of company directors are the cornerstone of effective corporate governance. These duties underscore the paramount importance of directors' commitment to the company's success and shareholders' interests. Upholding fiduciary duties ensures that the board of directors remains a steadfast guardian of the company's values, ethics, and long-term prosperity. As history has shown through notable corporate failures, breaches of these duties can have far-reaching consequences, highlighting the crucial role directors play in shaping the destiny of companies and the stakeholders they serve.

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