

November 2015

"If you're not making mistakes, then you're not doing anything. I'm positive that a doer makes mistakes" - John Wooden

DIRECTORS: MAKE SURE YOUR COMPANY PASS THE TEST

In an attempt to protect creditors and minority shareholders our Companies Act, 2008 (the "Act") prohibits a board of directors from authorising a distribution (i.e. the transfer of money or other property of the company), unless:

- The board applied the Solvency and Liquidity Test (the "Test"); and
- Provided that the board acknowledge by resolution that the company will satisfy the Test immediately after completing the proposed distribution.

It is the responsibility of the directors to ensure that a company apply the Test. To apply the Test, the directors must determine (by considering all reasonably foreseeable financial circumstances at that time) that:

- the assets of the company, as fairly valued, equal or exceed the liabilities of the company, as fairly valued (i.e. solvency); and
- the company should be able to pay its debt as it become due in the ordinary course of business for a period of 12 months after the date on which the Test is applied; or 12 months following a distribution (i.e. liquidity).

The financial information to be considered when applying the Test must be based on accounting records and financial statements of the company. The Test is not only a requirement for a distribution, but also in instances where the company propose to grant financial assistance / loans to directors or other persons to acquire shares in the company.

Law & Laughter

Joke: Know how copper wire was invented?
A: Two lawyers were fighting over a penny

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ENSURED YOUR BUSINESS PARTNER'S LIFE? LOOK OUT FOR THE TAXMAN

Business owners (i.e. shareholders) often ensure that on the death of a co-shareholder, the business can continue to operate with as little disruption as possible for the surviving shareholders.

A buy and sell agreement supported by a life insurance policy, will ensure that on the death of a co-shareholder, the surviving shareholder(s) have cash (i.e. proceeds of the life insurance policy) to acquire the deceased shareholder's shares; and that the estate of the deceased shareholder receive fair value for his / her interest held in the business.

However, should the following requirements listed below not be met by the buy and sell arrangement, the proceeds of the life insurance policy remitted to the deceased shareholder's estate will be subject to estate duty in terms of the Estate Duty Act.

For the proceeds of a life insurance policy in terms of a buy and sell arrangement to be exempt from estate duty, the following requirements must be met:

1. The relationship (i.e. as co-shareholder) to the deceased must have been in existence at the date of death;
2. It must have been the intention of the parties to enable the surviving shareholder(s) to acquire the deceased's interest at his / her death;
3. No premium on the policy must have been paid by the deceased.

Should any one of these three conditions not be met, the exemption will not apply and proceeds will be subject to estate duty.

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