

# Directors' Duties

Second Edition

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Published by  
Jordan Publishing Limited  
21 St Thomas Street  
Bristol BS1 6JS

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**British Library Cataloguing-in-Publication Data**

A catalogue record for this book is available from the British Library.

ISBN 978 1 84661 826 0

<http://www.pbookshop.com>

Typeset by Letterpart Limited, Caterham on the Hill, Surrey CR3 5XL

Printed in Great Britain by CPI Antony Rowe, Chippenham and Eastbourne

## PREFACE TO THE SECOND EDITION

When the first edition was published, the Companies Act 2006 was in its infancy and the provisions of it that codified the duties of directors had not been put in force much before publication of the book. Since then while we have not had much in the way of case-law on some provisions, what case-law we have got indicates clearly that the courts will apply, where possible, the law extant at the time at which the codified provisions came into operation. Certainly the courts have followed section 170(5) and interpreted and applied the duties in the same way as common law rules and equitable principles and regard has been had to the corresponding common law rules and equitable principles in the interpretation and application of the codified duties.

Most chapters of the book have been expanded and some, such as chapters 5, 13, 14 and 15 and parts of Chapters 6, 8, and 9, significantly so. This has been due to the cases that have been decided in the areas covered by these Chapters. I have considered or mentioned all relevant cases decided since the publication of the last edition, including the English cases of *O'Donnell v Shanahan*, *Sinclair Investments v Versailles Trade Finance, Paycheck Services, Re UKLI Ltd*, *McKillen v Misland* and *GHLM Trading Ltd v Maroo*. Also, I have dealt with some of the more relevant and important Commonwealth cases such as the litigation in *Bell Group v Westpac Banking* in Western Australia, *ASIC v Healey* (the Centro litigation) and *Buzzle Operations*.

I am thankful to my very supportive colleague, Joan Loughrey, for permitting me to draw on a couple of papers that we wrote together, namely 'Derivative Proceedings in a Brave New World for Company Management and Shareholders' [2010] JBL 151 and 'An assessment of the present state of statutory derivative proceedings' in J Loughrey (ed) *Directors' Duties and Shareholder Litigation in the Wake of the Financial Crisis* (Cheltenham, Edward Elgar, 2013), Chapter 7. I am also thankful to her for the fact that many of our discussions on directors have probably helped to shape some of the pages of this volume.

I thank Mary Kenny and Kate Hather from the publisher for their work relating to this book, and for the editing assistance of Claire Banyard.

I have sought to state the law as at 30 August 2013, but at the proof stage I have been able to include some reference to cases decided after that date.

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