

Book review

Directors' liability and indemnification: a global guide, second edition

Consulting Editor: Edward Smerdon

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Review by Jacquetta Castle

This is the second edition of “Directors’ liability and indemnification: a global guide”, a useful comparative summary of the law on directors’ duties and indemnification in various different jurisdictions in the world.

In the preface, Ed Smerdon, the consulting editor, sets off by putting his book in the context of the credit crunch and the financial upheavals that have taken place in the three years since the first edition in 2009 . Many jurisdictions have been introducing legislation increasing the responsibilities of directors and tightening the regulation of corporate conduct. With developing exposures, the extent to which indemnification rights and insurance protection are available to directors has become increasingly significant. Additionally, most companies today have an international outlook and it is not enough to view their potential personal liabilities from a national standpoint only.

The stated purpose of the first edition of the book was to provide “an accessible and comprehensive guide to the important features of liability and protection in 24 jurisdictions in order to assist directors and in-house counsel of national and international companies making informed judgments about the risks they are taking, and to provide a valuable starting point for private practice lawyers advising them”. In the second edition, those 24 countries have been expanded to 38 and now include China, the Czech Republic, India and Kazakhstan.

The contributors are individuals from leading law firms in the relevant jurisdictions. For example, the comprehensive French Chapter is contributed by Vovan & Associés, the German by Noerr LLP and the Bermudan by Conyers Dill & Pearman.

Each different jurisdiction is allocated a single chapter and the same formula is adopted in each case: first, directors’ duties including regulatory and criminal liabilities; second, claims and litigation culture; and third, indemnification rights, including director and officers’ insurance.

The directors' duties section is the most comprehensive and generally takes up a good three quarters of each chapter; it is where most of the "meat" is in the book. The information is provided succinctly and clearly and it is a credit to the editor (as well as to the contributors) that with English not being the first tongue to many of the contributors, the style is so clear and consistent.

The claims culture section is divided into "litigation culture", "impact of the credit crisis on claims", "ability to bring class actions", "litigation funding", "Plaintiffs' bar" and "Procedural barriers to the bringing of claims". There are some potentially useful materials but I am not certain it has been handled in the most appropriate way. Much of what there is could be distilled into tabular form in an appendix. That would also have the effect of concentrating the various contributors' minds towards producing something much more precise and punchy. As it stands, the material would make more for a fascinating panel discussion at an international conference on the subject.

The third and last section is the directors' and officers' insurance section. While this book does not purport to be a textbook on D&O insurance, I would prefer to see this section expanded at the expense of the "Litigation culture" section. The cursory treatment of D&O insurance and indemnification is particularly frustrating in countries where there is developed case law on the subject. The prime example is Australia; a knowledge of some of the more important Australian D&O cases is useful for anyone involved in D&O claims in this country, since there have been so few English reported cases. Germany and the USA are also important.

All in all, the book is a very useful summary of the law on directors' duties in different jurisdictions. It is not an academic treatise and does not purport to be one. It does exactly what it sets out to do; it is an "an accessible and comprehensive guide to the important features of liability and protection" primarily aimed at directors and busy in-house counsel.