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CHAPTER 10

CONCLUSION

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10.1 BACKGROUND

Creditors of the corporate business form are in a very vulnerable position. Their vulnerability is to a large part attributable to the unique nature of the company as a business vehicle, characterised by elements such as separate legal personality, limited liability, separation between ownership and control, and so forth.

Recognition of the plight of corporate creditors led to the implementation of various legal measures aimed at protecting their financial interest in the company. These measures proved disappointingly inadequate in many instances. This has led to the judiciary in some jurisdictions feeling compelled to develop existing legal principles pertaining to directors' duties in such a way that they could facilitate the protection of creditors' interests.

This development did not meet with universal approval. Those opposed to the extension of directors' duties to protect creditors' interests have three main arguments against it. The first is related to conceptual issues and policy concerns. The second argument is that existing remedies are more than adequate to protect creditors' interests. A last argument against a directorial duty to creditors pertains to the practical implementation of this extended duty. It is argued that the existing legal framework with regard to directors'

duties cannot be interpreted in such a way as to provide protection for creditors' interests in terms thereof.

In this study an attempt was made at proving that these arguments are not convincing and that the extension of directors' duties to creditors is both justifiable and possible within the existing legal framework.

10.2 JUSTIFICATION OF A DUTY TO CREDITORS

10.2.1 Conceptual Justification of a Duty to Creditors

It is firstly submitted that a duty to creditors is justifiable on a sound conceptual basis and that policy concerns raised in respect of the extension of directors' duties could be addressed in a number of ways.

This submission is based on a number of grounds. Among these is the fact that the contractual protection upon which so much emphasis is placed, is often feigned. The basis of the emphasis on contractual protection, namely a predilection for the contractual theory of the company, as well as a view that a clear distinction exists, or should be drawn, between those holding equity and those holding debt in a company and the remedies that they are entitled to, is questioned. It was also shown that the reasons for awarding shareholders the position of primary, or exclusive, corporate constituents, such as the fact that they should always be regarded as the equitable owners and residual risk-bearers, that shareholders are more able to exercise effective control over management, and so forth, are unconvincing.

Policy concerns regarding the potential effect of extended directors' duties on the behaviour of directors seem justified. It is suggested, however, that these concerns should be addressed by way of measures providing deserving directors with relief from liability, rather than through sacrificing accountability.

It is also feared that the extension of directors' duties to creditors may erode the principle of limited liability. In this regard it is emphasised that limited liability in the strict sense

refers to the liability of *shareholders* that are limited to the amount of their capital contribution to the company. Personal liability of *directors* would thus, strictly speaking, not encroach upon the principle of limited liability. It is furthermore argued that limited liability is not a right, but a privilege which should be enjoyed in a responsible fashion.

It is concluded that the extension of directors' duties to protect creditors' interests is indeed justifiable on a sound conceptual basis and that policy concerns regarding such an extension are either unfounded, or should be addressed in some other way.

10.2.2 Need for a Duty to Creditors

It is secondly submitted that those protective measures and remedies often referred to by opponents of an extension of directors' duties, namely statutory personal liability of directors, traditional insolvency remedies, and the piercing of the veil doctrine, are not adequate and that there is a definite need for an alternative remedy that could be provided by way of the extension of directors' duties to include creditors' interests. These traditional remedies are inadequate for a number of reasons.

10.2.2.1 Statutory Personal Liability

Section 424(1) of the South African *Companies Act*,¹⁶⁶⁹ which provides for the personal liability for payment of company debts by those who managed the affairs of the company fraudulently or recklessly, provides creditors with a powerful weapon. Both the case law and analyses by various commentators showed, however, that there are numerous uncertainties regarding the application of this provision.

Of particular importance, with regard to the position of corporate creditors, is the uncertainty regarding their *locus standi* to bring an application in terms of section 424(1). This uncertainty is caused by questions as to whether creditors' claims should be quantified; how a compromise in terms of section 311 would impact on the rights of creditors to make use of the section 424(1) remedy; whether this remedy is only available

¹⁶⁶⁹ Act 61 of 1973 (hereinafter *South African Companies Act*).

in respect of directors of companies that are being wound up or under judicial management, and so forth.

In some respects this remedy also offers more limited protection of the interests of corporate creditors than directors' fiduciary duties and duty of care and skill. Liability in terms of section 424(1) is dependent on the directors having engaged in reckless or fraudulent trading, both of which require creditors to prove fault on the part of directors. In case of liability based on a breach of fiduciary duties, on the other hand, creditors are not required to prove fault as this is typically strict liability.

In case of an application in which "reckless" trading is alleged, the creditors furthermore have to convince the court that the directors acted with gross negligence. However, if a delictual action is brought against directors for having failed to comply with their duty of care and skill, ordinary negligence would suffice.

It must be conceded that in some instances section 424(1) does offer wider protection than the traditional directors' duties. It is, for example, possible for the protection offered by section 424(1) to be available despite the company in question being financially sound. The section 424(1) remedy is also more extensive as it contains a punitive element.

These factors give rise to policy concerns – the advisability of allowing creditors to proceed against directors of solvent companies, as well as the punitive element of the remedy, may impact negatively on directors' risk-taking ability. This concern is exacerbated by the fact that relief that is typically available in respect of a breach of common-law duties, namely the relief offered by section 248 of the South African *Companies Act*, is not available in respect of section 424(1) liability.

A comparative study showed that equivalent provisions in jurisdictions such as Australia, New Zealand and England do not fare much better in providing protection to creditors'

interests. An amendment of section 424(1) to bring it in line with these provisions will therefore not have the same beneficial effect that a duty to creditors may have.

10.2.2.2 Typical Insolvency Remedies

Remedies that are typically provided for by the statutory principles of insolvency law, such as voidable dispositions, voidable preferences, and undue preferences cannot effectively protect the interests of creditors either. The same can be said in respect of common-law remedies, such as the *actio Pauliana*. This is largely the result of the fact that these remedies usually have very limited application and that their operation is often restricted by narrow time frames.

Apart from the fact that typical insolvency remedies enjoy very limited application, it must also be kept in mind that these remedies envisage company assets being recovered from the receiver thereof, whereas a duty to creditors would visit the consequences of preferential treatment of insider creditors upon the directors. This shift to director liability may have the added advantage of impacting positively on director conduct in general.

10.2.2.3 Piercing the Veil

The courts' discretion to disregard the company's separate legal personality under certain circumstances, as a result of which directors could incur personal liability for some of their actions, may be regarded by some as a better way to achieve similar results than those that could be achieved by way of the extension of directors' duties. It was indicated, however, that the operation of this doctrine is fraught with uncertainty. Courts are very reluctant to exercise their discretion to disregard the separate existence of a company. Neither will a creditor relying on this type of remedy, apart from being uncertain as to whether his or her particular case might be an instance where the court will deviate from its well-known reluctance to "pierce the corporate veil", be provided with the same solid legal structure that is provided for by a remedy based on traditional directors' duties.

10.3 FRAMEWORK FOR A DUTY TO CREDITORS

A final and very critical submission is that the existing legal framework in respect of directors' duties is indeed capable of being successfully adapted to include creditors' interests.

Central issues in this respect, as was indicated by an analysis of the case law, include the point in time when creditors become entitled to the protection afforded by such a duty; the beneficiary of the duty, in other words who has *locus standi* in case of a breach of the duty; and the type of protection afforded to creditors' interests by way of the traditional fiduciary duties and the duty of care and skill.

The duty to creditors is not seen as a continuous duty but as one that is triggered by a particular event related to the company's financial state. On the basis of their ability to be defined; to be reconciled with a conceptual justification of a duty to creditors; and factors such as the need for precision; the need for protecting directors' risk-taking ability; cost implications, and so forth, three "triggers" for the duty to creditors were identified, namely insolvency, doubtful solvency and actions causing insolvency.

It is furthermore submitted that "a duty to creditors" should not be seen as a duty running directly to creditors, but rather as a duty that is to be mediated through the juristic person of the company. Directors' fiduciary duties and their duty of care and skill are thus still owed to "the company". The fact that the duty to creditors is triggered will, however, necessitate a change in the way in which the company is perceived.

In this regard it is submitted that the interests of the company, which is traditionally equated with those of its shareholders, should now comprise those of its creditors. The advent of a trigger thus causes the interests of shareholders in a company to be displaced by those of creditors. This construction of a duty to creditors has the advantage that directors are not required to balance the competing interests of shareholders and creditors in a financially distressed company.

This “shift” from shareholders being the primary corporate constituents to creditors becoming the primary corporate constituents has a number of important consequences. The first is that the shareholders in general meeting will no longer be able to ratify a breach of directors’ duties, as they are no longer the indirect beneficiaries of these duties. Once the duty to creditors has been triggered, any ratification of a breach of directors’ duties by the shareholders will thus be void.

Creditors should furthermore be allowed to exercise the power of ratification. It is true, however, that the South African *Companies Act* does not provide company creditors with a “general meeting” through which they may exercise this power. A similar mechanism may, however, be developed that is analogous to the meeting of creditors provided for by section 311 of the South African *Companies Act* for the purpose of approving a compromise.

Creditors collectively, and not shareholders, are also the proper body to enforce directors’ duties on behalf of the company. *Locus standi* for this purpose could be provided for in one of two ways.

The first is that creditors, who are regarded to have become the “members” of the company, may take action against directors on behalf of the company. Once again the section 311 type meeting can be used as a model to provide creditors with a mechanism to act collectively.

The second is that creditors could proceed by way of derivative action, similar to the derivative action provided for by section 239 of the *Canada Business Corporations Act*.¹⁶⁷⁰ This method clearly requires legislative intervention, as the availability of the current derivative action in terms of section 266 of the South African *Companies Act* is limited to members.

¹⁶⁷⁰ RSC 1985, c C-44.

Creditors furthermore seem vulnerable to a breach of particular fiduciary duties of directors, as well as a breach of the duty of care and skill. It is therefore also submitted that both directors' fiduciary duties and the duty of care and skill may provide meaningful protection to the interests of creditors.

Elements of fiduciary duties that are particularly concerned with maintaining the balance of power between directors and shareholders, such as directors' duty to exercise their powers for a proper purpose, do not seem to affect the position of corporate creditors to a large extent. The particular elements of fiduciary duties that may impact on the creditors' position, however, are the directors' duty to act in good faith in the best interests of the company; their duty to avoid a conflict of interests; and their duty to maintain an unfettered discretion. The latter element seems especially pertinent in a group context, where directors of a subsidiary may feel compelled to sacrifice the interests of the subsidiary in favour of the holding company, to the detriment of the creditors of the subsidiary.

The extension of these fiduciary duties is, however, only possible if it is accepted that the "interests of the company" should be defined with reference to the interests of its creditors, once the duty to them has been triggered.

As was indicated, acceptance of this submission has important consequences insofar as *enforcement* of these duties is concerned, but will not impact on the *content* of these duties, since the company remains the ultimate beneficiary of directors' duties. The same conduct is therefore required of directors in compliance with their fiduciary duties to the company, whether it is shareholders' interests or creditors' interests which comprise the "interests of the company" – directors are still expected to refrain from self dealing, from preferring insider creditors and to maintain an unfettered discretion.

Creditors also stand to benefit from an extension of directors' duty of care and skill that is properly formulated and applied to include their interests. A discussion on the current legal principles regarding directors' duty of care and skill indicated, however, that

nobody stands to benefit from the lax and very subjective standards imposed by the courts in this regard. It is submitted that the duty of care and skill, unlike fiduciary duties, should be codified. The way in which the duty of care and skill of directors of banks was codified in terms of section 60(1A) of the *Banks Act*¹⁶⁷¹ provides valuable guidelines in this regard.

Creditors stand to benefit from an extension of the duty of care and skill, especially in the case of a company that is not financially sound. In such instances directors could engage in a last desperate attempt to salvage the struggling undertaking. As was indicated, such a rescue attempt will be funded with creditors' money as shareholders' equity will probably be extinguished at this stage. Shareholders, unlike creditors, would therefore probably not be opposed to directors taking one last chance, even if the chances of success seem very unlikely, as they have nothing to lose in case of failure, but everything to gain in the unlikely event that the attempt is successful.

In light of this fact it is submitted that the *content* of the directors' duty of care and skill, unlike the situation in case of an extension of fiduciary duties, will be affected under circumstances where the extension of directors' duty of care and skill to creditors has been triggered by "insolvency" or "doubtful solvency". This is so because the acceptable levels of risk-taking will be determined with reference to the fact that directors are effectively placing creditors' money at risk in engaging in a last rescue attempt.

It must be emphasised that the purpose of the extension of the duty of care and skill under circumstances such as these is not to preclude all risk-taking. However, in case of failure directors must be able to show that the degree of risk that corporate assets were exposed to was acceptable, with reference to the tests that normally apply to determine whether the directors had complied with their duty of care and skill.

¹⁶⁷¹ Act 94 of 1990.

The content of the duty of care and skill will not undergo a change, however, if the duty to creditors were triggered by “actions causing insolvency”. As was indicated,¹⁶⁷² this trigger operates differently from “insolvency” and “doubtful solvency”, as it applies in respect of companies that are financially sound. Should a company become insolvent as a result of the fact that the directors did not comply with their fiduciary duties or duty of care and skill, a duty to creditors is recognised once the company becomes insolvent. This trigger is therefore not so much concerned with director conduct after a duty to creditors has been triggered, but with director conduct prior to the duty having been triggered and will consequently not impact on what is expected of directors in terms of their common-law duties.

However, the fact that the duty has been triggered will mean that shareholders are no longer able to ratify the breach of duties that caused the insolvency of the company. It will furthermore indicate that creditors are allowed to take action against the directors who did not comply with their duties to the company, which fact ultimately led to the insolvency of the company.

A final critical element of the legal framework that bears on the duty to creditors is the measures in terms of which directors may be relieved from liability, for example indemnification, relief granted by the courts and director liability insurance. The importance of these measures lies in the fact that they are seen as mechanisms that may achieve and maintain the essential balance between accountability and entrepreneurial freedom.

It is submitted that relief granted by the courts and director liability insurance could go a long way towards promoting the balance referred to above. The South African judiciary is statutorily empowered to relieve directors from liability by section 248 of the South African *Companies Act*.

¹⁶⁷² See discussion *supra* Ch 7 (Point in Time When the Duty Arises) par 7.4.2.

This provision, if formulated correctly, seems to be adequate and it is therefore submitted that there is no need for the implementation of a formalised business judgment rule in South Africa. The unfortunate wording of the provision, namely that *negligent* directors may avail themselves of this relief if they acted *reasonably*, should be addressed, however. In this regard it is submitted the requirement of “reasonably” should be scrapped.

Director liability insurance may also offer a reasonable measure of protection to directors. Unfortunately the current interpretation of the South African provision allowing companies to take out director liability insurance does not protect directors at all. This interpretation seems to hinge on the fact that the prohibition against indemnification is contained in the same subsection that allows companies to take out insurance against losses that may result from a breach of directors’ duties. In order to remove this obstacle in the way of wider access to director liability insurance, it is submitted that these two aspects be dealt with in separate subsections.

10.4 DEVELOPMENT OF A DUTY TO CREDITORS

It is concluded that the extension of directors’ duties to encompass creditors’ interests is both justifiable and possible within the existing legal framework in respect of directors’ duties.

The legislatures’ response in those jurisdictions where the issue of directors’ duties to creditors was mooted during law reform was very lukewarm, however. From creditors’ perspective the cautious approach adopted by the legislature in respect of an extension of directors’ duties should not be seen as an obstacle in the way of the development of directors’ duties to include their interests. Company law abounds with examples of legal

principles that were developed on a common-law basis that were subsequently formalised in terms of statute, or complemented by statute.¹⁶⁷³

It thus seems to be up to the judiciary to develop directors' duties to creditors in a meaningful way. Pioneering in this respect has already been done in Australia, New Zealand, England, Canada and the United States of America. It is hoped that the South African judiciary will follow suit when the opportunity to do so arises.

10.5 CONCLUDING REMARKS

The duty to creditors may be criticised very clinically on the basis that it is theoretically and conceptually unsound; that the existing legal framework in respect of directors' duties does not permit the extension of directors' duties to include their interests and that such a development is unnecessary, as creditors' interests are adequately protected through measures of insolvency law and provisions such as section 424(1) of the South African *Companies Act*.

However, this study showed that the arguments against the extension of directors' duties to include creditors' interests are not convincing. On a purely theoretical level, there thus seems to be no good reason why creditors should not be afforded the protection that they could enjoy in terms of directors' duties.

It is assumed, however, that the strong opposition against such a duty in some instances is not only based on conceptual concerns, or the questioning of the theoretical possibility or the necessity of such a duty, but also on fear for the continued existence of the corporate form itself.

¹⁶⁷³ The development of the company as form of business enterprise could in itself be seen as such an example, with the legislature formalising to a large extent a structure that found expression in the common law "deed of settlement" company.

It is true that the topic of this study seems contrary to the fundamentals of company law and that it may in fact be seen as an attack on the very basis of the existence of the company as a form of business enterprise.

It is trite that the corporate vehicle was provided to encourage entrepreneurship and thus to promote economic growth. In order to achieve this objective, those in charge of the business were given the assurance that they would not be held personally liable should the business venture fail. Unlike the unsuccessful sole proprietor, those managing the business of the company could rest easy in the knowledge that their personal estates would not be exposed to claims of creditors of the failed enterprise. A duty to creditors seems to go directly against this assurance.

It is submitted, however, that the pendulum has swung too far towards the protection of those managing the affairs of the company, in trying to promote entrepreneurship. Directors of a failed company are afforded the opportunity to hide behind the veil of separate legal personality and avoid personal liability even in those cases where they were directly responsible for its demise – albeit through negligence or conduct in bad faith.¹⁶⁷⁴

The time seems to be ripe, therefore, to make an attempt at achieving a balance between providing an environment that is conducive to entrepreneurship and accountability. In an attempt to achieve this crucial balance, one must take care, however, that the pendulum does not swing too far in favour of accountability, thus sacrificing the opportunity for responsible risk-taking.

This may easily happen if the perception is created that directors should incur liability for all business failures, as would a sole proprietor. It should be emphasised, therefore, that

¹⁶⁷⁴ This gaping hole in accountability for those managing the affairs of the company was clearly recognised by the legislature, as indicated by the enactment of a provision such as s 424(1). It was shown, however, that this provision is not as effective as one would have wished it to be.

the purpose of this study is not to advocate general liability of directors to corporate creditors when their claims are not met, but only liability in cases where the directors did not comply with their fiduciary duties and their duty of care and skill. The consequences of corporate failure through no fault of their own should thus not be visited on directors.

The corporate vehicle as a tool of economic growth has proved invaluable and the importance of ensuring its continued existence cannot be over-emphasised. Unfortunately the corporate vehicle has also proved to be an instrument that could be grossly abused, which very fact could threaten its existence.

In this regard it is finally submitted that measures to promote accountability and responsible managerial behaviour, such as directors' duties to creditors, may, apart from serving the short-term goal of protecting the interests of a particular company's creditors, have the long-term benefit of contributing towards continued acceptance of the juristic person of the company as a form of business enterprise.

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SUMMARY

Directors' Duties to Creditors

by

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Creditors of the corporate business form are in a vulnerable position. Recognition of the plight of corporate creditors led to the implementation of various legal measures aimed at protecting their financial interest in the company. These measures proved disappointingly inadequate in many instances. As a result the judiciary in some jurisdictions felt compelled to develop existing legal principles pertaining to directors' duties in such a way that they could be used to facilitate protection of corporate creditors' interests.

This development did not meet with universal approval. Those opposed to the extension of directors' duties to protect creditors' interests have three main arguments against it. The first is related to conceptual issues and policy concerns. The second argument is that existing remedies are more than adequate to protect creditors' interests. A last argument against a directorial duty to creditors pertains to the practical implementation of this extended duty. It is argued that the existing legal framework with regard to directors' duties is not suitable to provide protection for creditors' interests.

However, it was shown in this study that the extension of directors' duties to protect creditors' interests is indeed justifiable on a sound conceptual basis and that policy concerns regarding such an extension are either unfounded, or should be addressed in some other way.

An analysis of existing protective measures and remedies often referred to by opponents of an extension of directors' duties, namely statutory personal liability of directors, traditional insolvency remedies, and the piercing of the veil doctrine furthermore showed that these measures are inadequate. This leads to the conclusion that there is a definite need for an alternative remedy, such as the extension of directors' duties to include creditors' interests.

The existing legal framework in respect of directors' duties furthermore proved to be capable of being successfully adapted to include creditors' interests. Central issues in this respect, as was indicated by an analysis of case law, are the point in time when the duty to creditors is triggered, the beneficiary of the duty, in other words who would have *locus standi* in case of a breach of the duty, and the type of protection afforded to creditors' interests by way of fiduciary duties and the duty of care and skill.

The existing legal framework also provides measures in terms of which honest and diligent directors may be relieved from liability, such as indemnification, relief granted by the courts and director liability insurance. These measures, if formulated correctly, may achieve and maintain the essential balance between accountability and entrepreneurial freedom.

The legislature appears to have adopted a cautious approach to the issue of directors' duties to creditors. It thus seems to be up to the judiciary to develop directors' duties to creditors in a meaningful way. Pioneering in this respect has already been done in Australia, New Zealand, England, Canada and the United States of America. It is to be hoped that the South African judiciary will follow suit when the opportunity to do so arises.

Keywords: beneficiary of directors' duties; company's interests; corporate creditor protection; corporate insolvency; corporate stakeholders; director liability; directors' duties; directors' duties to creditors; duty of care and skill; fiduciary duties.

OPSOMMING

Direkteurspligte teenoor Skuldeisers

deur

Sulette Lombard

Promotor: Prof dr PA Delport

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Korporatiewe skuldeisers is in 'n kwesbare posisie. Dit het gelei tot die implementering van verskeie regs middels gerig op die beskerming van hul finansiële belange in die maatskappy. Hierdie middels het in baie gevalle teleurstellend onvoldoende geblyk. As gevolg hiervan het dit die howe in sommige jurisdiksies genoop om bestaande regs beginsels met betrekking tot direkteurspligte uit te brei ten einde voorsiening te maak vir die beskerming van die belange van maatskappyskuldeisers.

Hierdie ontwikkeling dra nie almal se goedkeuring weg nie. Diegene wat gekant is teen die uitbreiding van direkteurspligte om skuldeiserbelange in te sluit, baseer hul teenkating op drie hoofargumente. Die eerste hou verband met konsepsuele kwessies en beleidsbesware. Daar word tweedens aangevoer dat bestaande remedies meer as voldoende is om skuldeiserbelange te beskerm. 'n Laaste argument teen direkteurspligte teenoor skuldeisers hou verband met die praktiese implementering van so 'n uitgebreide plig en die standpunt word gehuldig dat die bestaande regsraamwerk met betrekking tot direkteurspligte nie geskik is om beskerming aan skuldeiserbelange te verleen nie.

In hierdie studie is egter aangedui dat die uitbreiding van direkteurspligte om skuldeiserbelange te beskerm wel konsepsueel regverdigbaar is en dat beleidsbesware rakende sodanige uitbreiding óf ongegrond is, óf op 'n ander wyse aangespreek behoort te word.

'n Ontleding van bestaande beskermingsmaatreëls en remedies waarna teenstanders van uitgebreide direkteurspligte dikwels verwys, naamlik statutêre persoonlike aanspreeklikheid van direkteure, tradisionele insolvensieregremedies en die ontsluitingsleerstuk, het verder getoon dat hierdie middels onvoldoende is. Dit lei tot die gevolgtrekking dat daar 'n definitiewe behoefte is aan 'n alternatiewe remedie, soos die uitbreiding van direkteurspligte om skuldeiserbelange in te sluit.

Die bestaande regsraamwerk met betrekking tot direkteurspligte is voorts geskik om suksesvol voorsiening te maak vir die beskerming van skuldeiserbelange. Kernaspekte in hierdie verband, soos aangedui deur 'n ontleding van die toepaslike regspraak, is die tydstip waarop die plig teenoor skuldeisers ontstaan, die bevoordeelde van die plig, met ander woorde die party wat *locus standi* sal hê in geval van nie-nakoming van die plig, asook die tipe beskerming wat aan skuldeiserbelange verleen word deur vertrouenspligte en die plig tot sorg en vaardigheid.

Die bestaande regsraamwerk maak verder voorsiening vir meganismes ingevolge waarvan eerlike en pligsgetroue direkteure teen aanspreeklikheid gevrywaar kan word, byvoorbeeld vrywaring, vryspraak deur die hof en direkteuraanspreeklikheidsversekering. Hierdie maatreëls, indien korrek geformuleer, kan die noodsaaklike balans tussen verantwoordbaarheid en entrepreneursvryheid bereik en handhaaf.

Dit kom voor asof die wetgewer 'n versigtige houding inneem ten opsigte van direkteurspligte teenoor skuldeisers. Dit word dus aan die howe oorgelaat om direkteurspligte teenoor skuldeisers op 'n betekenisvolle wyse te ontwikkel. Baanbrekerswerk in hierdie verband is reeds in Australië, Nieu-Seeland, Engeland en

Kanada gedoen. Daar word gehoop dat die Suid-Afrikaanse howe soortgelyke inisiatief aan die dag sal lê indien 'n geskikte geleentheid hom sou voordoen.

Sleutelbegrippe: begunstigde van direkteurspligte; belange van die maatskappy; beskerming van maatskappyskuldeisers; direkteursaanspreeklikheid; direkteurspligte; direkteurspligte teenoor skuldeisers; korporatiewe belangegroep; korporatiewe insolvensie; plig tot sorg en vaardigheid; vertrouenspligte.

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