



Paperwork does matter...!

I know: it sounds like good news for lawyers. A recent judgement (*re. Mumtaz Properties Limited*) supports the argument that the paperwork does really matter.

In that case, the court held that various people were de facto directors of a company despite their not having completed the usual Companies House forms, minutes and so on. That was important because it allowed the court to hold them liable, along with other directors, for certain debts of an insolvent company.

In many ways that simply extends a fairly long established principle (known to lawyers as the *re Duomatic Limited* principle) which – in essence - says that if a “meeting of minds” can be proven to have taken place then those “minds” may have agreed something – notwithstanding the absence of formal paperwork. Under *Duomatic*, the minds who are meeting can be shareholders or classes of shareholders, and there is a similar principle which applies to directors, giving this concept quite wide importance.

So, if the law is arguing that you **don't** need paperwork to come to decisions and can be liable as a director of a company without having signed anything, why is the paperwork important? There are – at least – a couple of reasons:

1. Oral evidence will be used because of the lack of, or informality in, the written paperwork. Despite decisions such as *Duomatic*, greater weight will always be given to written evidence - as the courts will start by assuming that the parties involved had recorded their intentions in writing. Put another way, in the event of any dispute, what is set out in writing would have to be overturned – and that is often quite difficult to do.
2. Having to put something in writing tends to focus peoples' minds and bring out problem areas sooner rather than later. Our experience shows that it is always better to address potentially “thorny” issues sooner rather than later. If the parties are already in dispute, you are never going to get them to agree what they should have agreed months or years before.

So – and obviously I do have a vested interest in saying this! – the paperwork does matter. Getting it right, getting it written down and signed and getting that done sooner rather than later are all important – and just might save later problems.

John Clarke

If you would like to discuss this further, please contact [John Clarke](mailto:john.clarke@ccwlegal.co.uk).

E: john.clarke@ccwlegal.co.uk

T: 0845 22 33 001

www.ccwlegal.co.uk

