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DOES THE BOARD OF DIRECTORS HAVE THE AUTHORITY TO BIND THE COMPANY?

A Company is a separate legal entity distinct from its members with legal but no physical existence. It exists though its Directors who are acting in their capacity as agents of the Company.

It is a general rule that the Directors must act in good faith and in the best interests of the company. A duty of care in common law exists which includes a duty not to act negligently in managing the affairs of the company.

Provided that the Directors are acting as the agents of a company, the law of agency comes into force to any contractual transaction entered by the directors in the name and on behalf of the company.

Subject to **Sections 146-147 of the Contract Law Cap. 149**, the actual authority of an agent (as it is the position of a director) **may be expressed or implied. An express authority is** in writing or orally. An implied authority is inferred from the circumstances of the case giving the impression that the director in question is authorized to bind the company.

Section 33A of the Companies Law Cap. 113 concerns with the contractual transactions contemplated by the directors of a company and their validity on third parties and states the following:

*'the company shall be bound vis-à-vis third parties with respect to the acts or transactions of its officers, even if such acts or transactions do not fall within the objects of the company, **unless such acts or transactions are carried out in excess of the powers conferred or allowed by the law to be conferred to the officers in question**:*

*It is provided that the company shall not be bound vis-à-vis third parties in the event that such acts or transactions do not fall within the objects of the company, if and so far as the **company proves that the third party was aware** that the acts or omissions did not fall within the objects of the company or could not have been unaware thereof under the circumstances.'*

The aforementioned section goes further and states that the restrictions of the powers of the officers of the company contained in the articles of association or in the memorandum or in the decisions of the directors or of the general meeting of the company, may not be used against third parties, even if they have been published.

Related to the above is the rule in ***Royal British Bank v. Turquand (1856) 6E&B 327 (or 'internal management rule')*** which states that a person dealing in good faith with a company is entitled to assume, in the absence of facts putting him on inquiry, that there has been due compliance with all matters of internal management and procedure required by the corporate constitution. However, a third party cannot claim the benefit of this rule if the limitations of the Director's authority are known. Where there has been any such irregularity, a subsequent board meeting can ratify and confirm what was done irregularly and it will then be valid ab initio.

All of the above has been thoroughly studied and analyzed in both Cypriot and English case law as well as in articles which provide in-depth guidance on the matter.

The purpose of this legal briefing is to provide a general guideline on the subject and not to be considered, in any way, as legal advice. It is advisable to seek professional and legal advice on this subject before proceeding with any general information provided to you. For further clarifications and advice please contact us at legal@economideslegal.com.

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