

## Issue

Is the claim by Sylvia that to be a non-executive director 'you only need to be loyal to the Company to the extent you think is correct and rely on the advice of the chief financial officer' accurate?

## Law

### Companies Act 1993

#### **S 131: Duty of directors to act in good faith and in best interests of company**

when exercising powers or performing duties, a director must act in a manner which he or she believes is in the best interests of that company's holding company.

#### **S 137: Director's duty of care**

A director when exercising powers must exercise with care, diligence, and skill that a reasonable director would exercise in the same circumstances.

3 factors used to calculate the circumstance:

- (a) the nature of the company; and
- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by him or her.

#### **S 138: Use of information and advice**

(1) Subject to subsection (2), a director when exercising powers may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- employee that is reliable and competent
- a professional adviser or expert
- any other director or committee of directors

## Application

Non-executive directors have the same legal responsibility as executive directors but they're not involved in the day-to-day operation of the organisation hence by *Daniels v Anderson* (1995) Shane would share the same obligations as an executive.

An executive is bound by S131 and S137 of the **Companies Act 1993**

- Sylvia's statement about being to be loyal to the Company to the extent you think is correct is partially applicable to S131 (subjective (good faith) duty) however in S131 it outlines that a director should act in the best interest of a company, this may not always align with a director's interest hence Sylvia's statement may be misleading as it doesn't address that Shane has an obligation to the company if a conflict of interest may arise as per *Hedley v Albany Power Centre (in liq)* [2005] 2 NZLR 196.
- Additionally It fails to address that Shane's actions are objectively measured by S137, which would mean that Shane's actions must meet those of a reasonable director regardless if he believes that he is acting to the best interest of the company.

By S138, Shane would be expected to rely on reports prepared by the Chief financial officer (CFO) as to Shane the CFO is an expert in the field of finance however it is not a requirement as relying on this advice may contradict S131 and S137 as the advice given by the CFO may not be the best course of action for the company - hence Sylvia's statement is not accurate.

**Conclusion**

I do not agree with Sylvia's statement as it lacks clarity and may not accurately communicate the expectations and obligations of a director.