

A bill expressly allowing company directors to consider environmental, social and governance (ESG) factors has passed into law despite strong opposition during the select committee process.

COMPANIES (DIRECTORS DUTIES) AMENDMENT BILL

On 2 August 2023 Parliament passed into law the Companies (Directors Duties) Amendment Bill (**Bill**). The Bill amends the director duties in the Companies Act 1993 to make it clear that directors can take into account “recognised” ESG factors when determining the best interests of the company or (if permitted to do so) its holding company.

As we said in our June [article](#) while Jackson Russell is fully supportive of ESG principles being embraced by company directors, the Bill achieves little and involves a number of the same risks that applied to the original Bill. The law before the passing of the Bill did not preclude a director from taking into account ESG factors such as those listed in the Bill, and we believe the better approach would have been not to proceed with the Bill. The Bill achieves little but increases compliance costs and the risk of litigation.

SO WHAT HAS CHANGED?

Section 131 (Duty of directors to act in good faith and in best interests of company) of the Companies Act now includes a new subsection as follows:

“(5) *To avoid doubt, in considering the best interests of a company or holding company for the purposes of this section, a director may consider matters other than the maximisation of profit (for example, environmental, social, and governance matters).*”

FURTHER INFORMATION

For further information or to discuss how any changes may affect you as a director, please get in touch with one of the lawyers listed below or your usual Jackson Russell advisor.

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