

IMPORTANT STATEMENT FROM THE ETTA TREASURER (RESPONSIBLE FOR TRADE ISSUES)

I am increasingly concerned that in the event that a major player in the table tennis trade be elected as a Director of the ETTA, this would have a traumatic affect on our relationship with our funding bodies, Sport England and UK Sport, whose views on the issue are well documented, together with other commercial bodies who have pledged their support for the coming years. This also includes concerns expressed by our International Table Tennis Federation who specifically prohibit any member of the trade to be appointed to their executive.

In my opinion it would intolerable for the ETTA to have at its helm, in such an influential position, a director who could exploit trade issues to their own advantage. This would, I fear, put at risk the vast sums of money now at our disposal. To that end I wish to make it public knowledge that albeit I am unopposed in this election, I would find my position untenable in such a situation referred to above and would consequently resign from my directorship.

Below are comments from a statement by UK Sport during a recent meeting with them and from Dec 2008 edition of 'Register', the official magazine issued by Companies House.

The UK Sport Chair of the Panel asked "Was there now any conflict of interest i.e. Trade interests for any of the Directors of the ETTA plc? "The response was that " no there was currently no conflict or likely conflict at present". To which The Chair of the Panel said "good, as that could have been an issue for the panel".

COMPANIES HOUSE ON 'CONFLICTS OF INTEREST'

'One of the most innovative aspects of the Companies Act (CA) 2006 was the inclusion of a statutory statement of directors' duties to replace the common law duties developed over the preceding 150 years.'

'The statutory statement is contained in CA 2008, part 10, chapter 2' and it has received widespread coverage, so no doubt, readers are familiar with the general framework of the seven duties imposed on directors by that chapter. They are:

- A duty to act within their powers (s 171)
- A duty to promote the success of the company (s 172)
- A duty to exercise **independent** judgement (**s 173**)
- A duty to exercise reasonable care, skill and diligence(s 174)
- **A duty to avoid conflicts of interest' (s.175)**
- A duty not to accept benefits from third parties (s 176); and
- A duty to declare an interest in proposed transactions with the company (s 177)'

'Conflicts of interest are a fact of business life, given the ever present temptation for a director to pursue his/her personal interests rather than the interests of the company.'

'The traditional legal response to what is commonly called an agency problem (i.e. the problem of controlling agents with responsibility for other people's assets) is to impose a fiduciary duty of loyalty to enforce that duty strictly. Directors are classic fiduciaries and the Companies Act 2006 s 175, with effect from 1 October 2008, gives statutory expression to the fiduciary duty to loyalty to the company as follows:

- (1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
- (2) This applies in particular to the exploitation of any property, information or opportunity (and it's immaterial whether the company could take advantage of the property, information or opportunity)'

'Recognising a conflict of interest'

'Directors can be slow to appreciate that they are in a position of conflict of interest (though that might be a generous interpretation of their conduct in some cases) but part of the difficulty genuinely lies in the myriad circumstances in which a conflict can arise.'

'Whilst the factual permutations which give rise to a conflict of interest may be endless, the question any court and therefore the question any director must focus on is 'whether the fiduciary's exploitation of the opportunity is such to attract the application of the rule in *Bhullar v Bhullar*. In other words, the simple question is whether a situation has arisen or has been exploited or a transaction entered into in circumstances in which the director has a conflict or possible conflict of interest between his personal interests and his duty of loyalty to the company.'

Martin Clark FCCA
ETTA Director, Treasurer and Vice President

The responsibilities of Directors and others in influential positions have become more open, transparent and changed over the last few years via the Companies Acts of 2006 and 2008.

