The English Supreme Court has delivered an important judgment on the subject of directors' duties in the case of *Saxon Woods Investments Limited and others (Respondents) v Francesco Costa [14 July 2026] UKSC 21.* Prior to this decision it had generally been considered that a director's duty to act in good faith in the interests of the company fell to be assessed subjectively.

Following this decision, whilst it may remain the case that a court will be reluctant to re-examine a director's commercial decision, in respect of a duty of care and skill, the test for whether that decision is taken in good faith by the director is to be regarded as objective not as subjective.

Accordingly, the English court will now impose an objective assessment of the director's conduct with a particular focus on whether the director could reasonably have believed he was acting in good faith. The facts of *Saxon Woods* were somewhat extreme, involving a director who pursued a strategy that was in breach of a shareholders' agreement to sell the company which strategy he concealed from other board members, delayed the sale and in the event the company was wiped out following the Covid 19 pandemic.

Despite all this, the judge at trial had found the director was not in breach of his fiduciary duty. The director apparently firmly believed his actions were in the best interests of the company (thinking he would eventually be thanked for his actions) and it was held he could not be in breach of duty under the subjective test.

Both the Court of Appeal and the Supreme Court found this to be an unacceptable outcome, saying that it "strains credulity" to think the law should permit a director to act in any way he or she liked provided it was backed up a genuine belief that doing so was in the best interests of the company. There accordingly had to be at least some objective sense checking element to the assessment of the director's conduct.

This is also consistent with the development of the law of dishonesty, which now imports a significant objective analysis.

It will be interesting to see how this decision affects the way in which directors' duties are viewed in the offshore community. In the Cayman Islands, it is common and (unlike England and Wales) permissible for a company's articles of association to exculpate a director, in respect of the exercise of duty of care, from liability for everything apart from "wilful neglect or default". As the Cayman Islands law presently stands, a director will only be liable for wilful default or neglect if he or she deliberately or recklessly breached a duty. However, we may anticipate in the light of this decision in *Saxon Woods* that a Cayman court will take a more critical view of what may constitute wilful neglect given that all duties of care and skill must be exercised subject to the fiduciary duties which now include an objective standard.

It follows that even in the Cayman Islands, care needs now to be taken to distinguish earlier advice which in analysing the proper exercise of a fiduciary duty, relied entirely on a subjective analysis of the director's state of mind.

No doubt we should anticipate a similar approach in relation to the analysis of what constitutes good faith for the purposes of the statutory exculpation of a general partner of an exempted limited partnership under section 19 of the Cayman Islands Exempted Limited Partnership Act (2025 Revision).

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