

Directors Duties



Directors owe statutory duties to the company they act for under the Companies Act 2006 (the "Act").

These are summarised under the following seven general duties:

- To act within powers.
- To promote the success of the company.
- To exercise independent judgement.
- To exercise reasonable care, skill and diligence.
- To avoid conflicts of interest.
- Not to accept benefits from third parties.
- To declare an interest in a proposed transaction or arrangement.

The above list of duties apply to executive, non-executive and shadow directors and does not cover all the duties a director may owe to a company such as the duty to consider or act in the interests of creditors.

Duty to act within powers

A director must act in accordance with the company's constitution and must only exercise their powers for a proper purpose in accordance with the Act, the company's articles of association, and where applicable, the instructions of the company's shareholders.



Duty to promote the success of the Company.

A director must act in good faith in a way that they consider would be most likely to promote the success of the company for the benefit of its shareholders as a whole. In doing so, directors must, amongst other things, have regard to:

- The likely consequences of any decision in the long term;
- The interests of the company's employees;
- The need to foster the company's business relationships with suppliers, customers and others;
- The impact of the company's operations on the community and the environment;
- The desirability of the company maintaining a reputation for high standards of business conduct; and
- The need to act fairly as between the shareholders of the company.

The principal consideration in relation to the above is **how** decisions are made by a director, whether formally via a board meeting or otherwise.

Duty to exercise independent judgement

A director must exercise independent judgement when making decisions on behalf of the company and cannot, for example, delegate their powers to others. This does not mean that directors cannot rely on the advice of third parties, provided that they comply with their other duties.

Duty to exercise reasonable care, skill and diligence

A director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with:

1. The general knowledge, skill and experience that may reasonably be expected of a person carrying out the directors' functions; and
2. The subjective knowledge, skill and experience of the actual director.

Where a director has specialist knowledge, the subjective element of the test imposes a higher duty on the relevant director.

Duty to avoid conflicts of interest

A director must avoid situations where there is, or could potentially be an interest that conflicts with the interest of the company, whether directly or indirectly. This particularly applies to the exploitation of property, information, or opportunity and is an objective test (i.e. it does not depend on whether the director is or was aware of the conflict).

The duty to avoid conflicts of interest will not be breached if the situation cannot reasonably be regarded as likely to give rise to a conflict. The duty to avoid conflicts of interest will continue to apply to former directors who have left the service of the company.

Where a director has an interest in a proposed transaction or arrangement with the company, the director must declare this to the company.

For private limited companies, provided that there are no prohibitions in the company's articles of association, the board of directors may authorise a director's conflict of interest.

Duty not to accept benefits from third parties

Directors must not accept any benefit from a third party that is given by reason of their position as a director, or their action / inaction as a director. This duty will continue to apply to former directors who have left the company.

This duty will not be infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. Or where the benefit is conferred by either the company itself, or its holding company or subsidiaries.

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Disclaimer: This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

Duty to declare interest in a proposed transaction or arrangement with the company

Directors must declare the nature and extent of any interest in a proposed transaction or arrangement with the company (whether direct or indirect) to the other directors.

A director will not need to make a declaration of interest if their interest cannot reasonably be regarded as likely to give rise to a conflict of interest.

Consequences of breach of directors' duties

As the duties are owed to the company, it is generally only the company that may enforce them, or the company's shareholders in the form of a derivative action on the company's behalf.

If a serious breach has been committed, this may incur criminal liability or result in the director being barred from office.

The company's shareholders may ratify certain breaches of the directors provided that ratification does not depend upon the vote of the relevant director or their connected persons (e.g. family members).