

Checklist of Director's Statutory Duties

- Check that Directors are always acting within their powers – any limitations on what a director may do will be set out in the Articles of Association or the memorandum.
- When fulfilling the duty to promote the success of the company there are lots of things to take into account when taking decisions. These include the long term consequences and their impact on the community, the environment and the interests of your company's employees.
- For really important decisions consider documenting in the board papers proposing the matter, what has been taken into account when putting the proposal together. This provides proof that careful consideration has been given. (This is especially relevant when making the business decisions regarding downsizing and redundancies).
- A Director must not put himself into a situation where their interests conflict with those of the company. From 1 October 2008, if an existing private company wants the board of directors (as opposed to the shareholders) to consider and approve any conflict situation, it will need to either amend its articles or, if it is a private company, pass a members' resolution to give the board this power.
- If a Director is currently in a conflict situation which has not been disclosed to and approved by the members, they will need to make full disclosure to the members and get any actions ratified before asking for the existing conflict situation to be approved.
- From 1 October 2008 directors involved in proposed transactions or arrangements with the company must declare both the nature and extent of their interest to the other directors. This can be done in writing or orally at a board meeting (where it should be recorded in the minutes) before the transaction is entered into.
- From 1 October 2008 directors must not accept benefits from third parties, so you should carefully consider any offers of corporate hospitality. Most will still be allowed if the gift cannot reasonably be regarded as creating a conflict, but this will depend on the gift and your personal circumstance.
- Directors must exercise independent judgement and reasonable skill, care and diligence, therefore they must make sure that they carefully and properly consider the business decisions to be taken.
- A Director will still be in breach of the duty to avoid conflicts if they resign to exploit an opportunity which came to them when they were a director, and the duty not to accept benefits from third parties still applies in relation to things done or not done while they were a director.
- A Director must be given a Directors Service Agreement.

Directors - Scope and nature of general duties

(Extract from Companies Act, Sections 170 -177)

- (1) The general duties specified are owed by a director of a company to the company.
- (2) A person who ceases to be a director continues to be subject:
 - (a) to the duty (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director, and
 - (b) to the duty (duty not to accept benefits from third parties) as regards things done or omitted by him before he ceased to be a director.

To that extent those duties apply to a former director as to a director, subject to any necessary adaptations.

- (3) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.
- (4) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties.
- (5) The general duties apply to shadow directors where, and to the extent that, the corresponding common law rules or equitable principles so apply.

Duty to act within powers.

A director of a company must:

- (a) act in accordance with the company's constitution, and
- (b) only exercise powers for the purposes for which they are conferred.

Duty to promote the success of the company

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to:
 - (a) the likely consequences of any decision in the long term,
 - (b) the interests of the company's employees,
 - (c) the need to foster the company's business relationships with suppliers, customers and others,
 - (d) the impact of the company's operations on the community and the environment,
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - (f) the need to act fairly as between members of the company.
- (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.
- (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

Duty to exercise independent judgment

- (1) A director of a company must exercise independent judgment.
- (2) This duty is not infringed by his acting:
 - (a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or
 - (b) in a way authorised by the company's constitution.

Duty to exercise reasonable care, skill and diligence

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with:
 - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and
 - (b) the general knowledge, skill and experience that the director has.

Duty to avoid conflicts of interest

- (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 is immaterial whether the company could take advantage of the property, information or opportunity).
- (3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.
- (4) This duty is not infringed:
 - (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (b) if the matter has been authorised by the directors.
- (5) Authorisation may be given by the directors:
 - (a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or
 - (b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.
- (6) The authorisation is effective only if:
 - (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and
 - (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.
- (7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Duty not to accept benefits from third parties

- (1) A director of a company must not accept a benefit from a third party conferred by reason of:
 - (a) them being a director, or
 - (b) them doing (or not doing) anything as director.
- (2) A "third party" means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.
- (3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.
- (4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- (5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Duty to declare interest in proposed transaction or arrangement

- (1) If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.
- (2) The declaration may (but need not) be made:
 - (a) at a meeting of the directors, or
 - (b) by notice to the directors in accordance with:
 - (i) (notice in writing), or
 - (ii) (general notice).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this section must be made before the company enters into the transaction or arrangement.
- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.

- (6) A director need not declare an interest:
 - (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware);
 - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered:
 - (i) by a meeting of the directors, or
 - (ii) by a committee of the directors appointed for the purpose under the company's constitution.

For the full Companies Act please [click here](#):