

Companies Act 2006 – Directors Duties

The Companies Act 2006 (the Act) sections 170 – 178 set out the legal responsibilities and general duties of company directors, and are known as the Statement of General Duties of Directors. This is based on established common law principles and case law, but also includes important reforms which affect all directors – executive or non-executive – in every company, large or small.

The Statement of General Duties of Directors comes into effect on 1 October 2007, with the exception of the duty to avoid conflicts of interest, which comes into force in October 2008.

The main principles are summarised below:

The general duties mean a director must act in the interests of the company and not in the interests of any other parties – including shareholders

Understanding this principal should make it easier for you to decide how to act when there may appear to be a number of interested parties with apparently conflicting interests.

The company comes first. This principle applies even for ‘one man’ companies, which means a sole shareholder/director may not put his/her interests above that of the company.

1. Duty to act within the company’s powers

In addition to the duties and responsibilities imposed on directors by the Act, every company will have its own set of rules known as its ‘constitution’.

- It is your duty to act in accordance with the company’s constitution; that is, directors must observe any restrictions contained therein.
- The powers delegated to directors by the shareholders must be used for the benefit of the company.

2. Duty to promote the success of the company

The term ‘success’ is not defined in the Act because this may vary from company to company. However, the underlying principle is that every director has a legal duty to try and act in such a way which, in their judgement, is most likely to bring ‘success’ to the company. For most companies ‘success’ is likely to mean sustainable profitability.

3. Duty to exercise independent judgement

This is self-explanatory but the Act will not be breached if you act in accordance with any prior agreement with the company on the exercise of your duties or as laid down by the company’s constitution.

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4. Duty of skill, care and diligence

Every director must exercise reasonable care, skill and diligence. The duty extends to everything that directors do. This duty is broken into two parts:

- as a director you must show the general knowledge and skill which may reasonably be expected of a person carrying out the functions you carry out in relation to the company. Thus, a managing director will be expected to have a knowledge of all areas of the business or to have engaged people who can help them; and
- as a director you must also act in accordance with any specific general knowledge and skills you actually have. Therefore a director who is a qualified accountant would be expected to show greater general knowledge, skills and interest in relation to financial aspects of the company than another director who was not so qualified.

5. Duty to avoid conflicts of interest

You must not allow any personal or outside interest to affect your duty to the company. You must, therefore, avoid any situation where you personally have, or may have, a direct or indirect interest which conflicts, or may conflict, with the interests of the company.

This duty even extends to former directors.

However, this duty is not infringed if:

- the situation cannot reasonably be regarded as likely to give rise to a conflict; or
- the matter has been authorised by the directors, as appropriate to the type of company (public companies must give the directors specific powers in their articles)

6. Duty not to accept benefits from third parties

A director of a company you must not accept a benefit from a third party arising for any reason of you being a director; or your doing (or not doing) anything as a director.

Any benefits that cannot reasonably be regarded as likely to give rise to a conflict of interest can be ignored.

This duty also applies equally to former directors.

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7. Duty to declare an interest in a proposed transaction or arrangement

The Act states: “If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company he [she] must declare the nature and extent of that interest to the other directors.”

The declaration of an interest can be either verbal or written but must comply with the requirements set out in the Act.

Reforms introduced by the Act

The opportunity has also been taken to bring in the following reforms, which will all take effect from October 2008:

- **Minimum age** -The minimum age at which someone can be appointed as a director will be 16 years. Any directors below this age on 1 October 2008 will automatically cease to hold office. At the same time, the maximum age of 70 for directors of public bodies will be abolished.
- **Corporate directors** - It will only be possible to appoint a corporate director so long as there is at least one other director who is a human being. This is a change since previously it was possible to have a sole corporate director.
- **Registration and publication of directors’ residential addresses** - It will no longer be necessary to include directors’ home addresses on public records. They will be able to use a ‘service’ address such as the company’s registered office. However, it will still be necessary to keep a separate register of directors’ residential addresses.

Additional duties

In addition to the duties discussed above, as a director you will continue to have responsibilities and duties for, amongst other things, ensuring that:

- the company is not wrongfully trading
- the company does not pay an illegal dividend
- you are not illegally involved with ‘phoenix’ companies – where the assets of a failed company are moved to another legal entity.
- you are not acting in breach of disqualification orders
- accounts are prepared properly, with proper keeping of books and records

You need to be aware that there are civil and criminal sanctions and penalties for breaches of your responsibilities and duties as a director.

Detailed guidance is available from www.garbetts.com/download/ca2006detail.pdf