



## Duties and Responsibilities of Company Directors

The Companies Act 2006 codifies the duties and responsibilities of directors by bringing together and clarifying duties previously dealt with under case law.

The statutory company directors' duties are as follows:

(i) Duty to act within powers

A director of a company must always act in accordance with the powers granted to directors in the company's constitution. The 'constitution' includes not only the Memorandum and Articles of Association but any special resolutions and binding agreements made by the company.

(ii) Duty to promote the success of the company

A director must act in the way s/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. Specifically having regard to

- the consequences of any long term decisions,
- the interests of the company's employees,
- the need to maintain the reputation of the company and foster business relationships and
- the impact of the company's operations on the community and the environment.

(iii) Duty to exercise independent judgement

A director must exercise independent judgment. This duty requires a director to act in what s/he considers to be in the interests of the Company and not someone else. This duty is not infringed if s/he acts in a way authorised by the company's constitution or with an agreement entered into by the Company that restricts the directors from exercising this discretion in the future.

(iv) Duty to exercise reasonable care, skill and diligence.

A director of a company must exercise reasonable care, skill and diligence. An assessment as to whether a director has carried out this duty adequately will consider the knowledge, skill and experience the director has and measure this against the standards expected of another person carrying out similar duties to the director in question.

For example, if a director is also the company's accountant s/he would be judged against a person with similar qualifications to him/her and therefore the standard of care, skill and diligence to be shown should be higher.

(v) Duty to avoid conflicts of interest.

A director must avoid a situation in which s/he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company.

This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether a company could take advantage of the property, information and opportunity).

This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement a director has with the company.

Non-conflicted directors can authorise a conflict, provided that nothing in the company's constitution prevents such authorisation, the director with the conflict does not count towards a quorum at the meeting where the matter is considered and s/he does not vote on the matter.

Alternatively, members of the company can authorise a conflict by ordinary resolution

(vi) Duty not to accept benefits from third parties.

A director must not accept any benefit from a third party if this benefit is connected with his/her carrying out, or not carrying out, the duties associated with him/her being a director.

(vii) Duty to declare interest in proposed transactions or arrangements with the company.

If a director has directly or indirectly an interest in a proposed transaction or arrangement with the company s/he must, before the company enters into the transaction or arrangement, declare the nature and extent of that interest to the other directors.

A declaration can be made at a board meeting, by notice in writing, or through a general notice. A director may give a general notice if s/he has an interest in another organisation and will continue to have an interest in any transaction or arrangement with that organisation after the original notice has been given. A general notice must be given at a meeting of the directors and be raised at the next meeting of the Board after such a notice has been given.

Duty to declare an interest in existing transactions or arrangements.

A director must declare an interest to the directors in any transaction or arrangement that has been entered into by the company. However, if a director has already declared an interest before the company entered into such a transaction or arrangement s/he does not have to declare it again.

The declaration must be made at a meeting of the directors, by notice in writing or through

a general notice. If at any time, the declaration of interest becomes inaccurate, the director must make a further declaration.

A director is exempt from making a declaration if s/he is not aware of his/her interest, the transaction or arrangement or that s/he is required to make a declaration provided that these are not matters of which s/he ought reasonably to have been aware.

A director is not required to declare an interest if: it cannot reasonably be regarded as likely to give rise to a conflict, the directors are already aware of the conflict or it concerns a directors service contract that had been considered at a Board meeting.

### **Duties of Directors of charitable companies**

The duties of directors of charitable company mirror those for non-charitable companies. However, charitable companies should be aware of the following specific points in relation to directors' duties to declare conflicts of interest.

Duty to declare interest in proposed transactions or arrangements with the company.

As stated above, a director has a general duty to avoid conflicts of interest and a duty to declare interests in proposed transactions or arrangements with the company. For a charitable company the directors have a duty to avoid all conflicts of interest and are only able to make declarations of interest in proposed transactions or arrangements with the company where the nature and extent of the transaction or arrangement is permitted in the company's constitution.

In addition, the specific application of directors' duties to charitable companies only allows authorisation of a conflict of interest to be given by the directors where the charitable

company's constitution expressly allows them to do so.

The Charity Commission may authorise an act even if it breaches this duty.

Duty to declare an interest in existing transactions or arrangements.

Non-conflicted directors can authorise a conflict, provided that the company's constitution permit such an authorisation in relation to the specific transaction or arrangement.