

This note provides a brief summary of the duties that generally apply to a director of a Company.

Directors are generally responsible for the management of the company and may exercise all the powers of the company. However, the extent of their authority may be constrained by the Companies Act 2006 and the company's Articles of Association.

Directors Duties

Directors are in a position of trust within a company and as such they owe certain duties to the company. The Companies Act 2006 includes a statutory list of general duties for directors, which are enforceable by the company or, in certain circumstances, its shareholders. The duties are as follows:

1. Duty to act within powers – a director of a company must act in accordance with the company's constitution and only exercise powers for the purposes for which they were given.
2. Duty to promote the company's success – a director must act in a way he considers in good faith will be most likely to promote the success of the company for the benefit of its members as a whole and must have regard to matters such as:
 - the likely consequences of any decision in the long term;
 - the interest of the company's employees; and
 - the desirability of the company maintaining a reputation for high standards of business conduct.
3. Duty to exercise independent judgement – each and every director of a company must “*vote his conscience*”, without reference to any extraneous third party interests.
4. Duty to exercise reasonable care, skill and diligence – a director must apply his own knowledge, skill and experience but, in addition, he must meet an objective test of what might “reasonably be expected” of him, given the office he holds.
5. Duty to avoid conflicts of interest – a director must not put himself in a position where his personal interests (or duties to other parties) conflict, or may conflict, with the company's interests.
6. Duty not to accept benefits from third parties – if a director does so he will be obliged to account to the company for any profit made unless he fully discloses all the facts to the shareholders and obtains their approval.
7. Duty to declare interest in proposed transaction or arrangement – if a director 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.

The duties set out in the 2006 Act is not an exhaustive list and, therefore does not cover all of the duties owed by a director, such as the duty of confidentiality. In addition, directors are responsible for ensuring that the company complies with statutory controls on the company in areas such as employment, health and safety, environmental protection and consumer protection.

Whilst the above duties may appear onerous, there is no expectation of perfection or infallibility on the part of directors. In short, the overriding legal requirement is to act honestly, competently and conscientiously. If a director is in any doubt, then they should raise the matter with the other directors, the shareholders and/or seek legal advice.

Liability of Directors

Personal liability, both civil and criminal, can arise in a number of circumstances, such as:

1. Liability for debts – generally, directors have no liability for debts incurred by or on behalf of the company. However, a director may be liable if: for example, he engages in misconduct; gives a personal guarantee; or voluntarily assumes responsibility.

2. Breach of duties - If a director breaches any of his duties, the company could require him to compensate the company for loss suffered and/or to account to the company for any profit made. Such breaches can be ratified by the shareholders by passing an ordinary resolution. By doing so, this brings to an end the company's right to avoid or contest the director's action.
3. Exceeding actual authority – if a director exceeds his actual authority he may be liable to indemnify the company for the loss it has suffered and to account to the company for any profit he has made.
4. Failure to maintain company records – all directors of the company are required to maintain proper up-to-date records both at Companies House and internally. For example, they are responsible for the preparation of the Company accounts. Failure to keep proper records may result in a fine.
5. Untrue or misleading statements – a director may be liable to compensate the company for any loss suffered as a result of any untrue or misleading statements made by that director.
6. Wrongful Trading – a director may face personal liability if a company has gone into insolvent liquidation and before that liquidation took place, keeps trading when the director knew, or ought to have known, that there was no reasonable prospect of the company avoiding insolvent liquidation.
7. Fraudulent Trading – personal liability is rare as it has to be proved that in the course of winding up a company, a director was knowingly a party to the carrying on of the company's business with an intent to defraud the creditors. Breach of the Insolvency Act requirements can lead to criminal prosecution, personal liability and/or disqualification.
8. Health and Safety – Health and safety law places duties on organisations and employers, and directors can be personally liable when these duties are breached if the Health & Safety offence is committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other similar Officer of the organisation.
9. Corporate Manslaughter and Corporate Homicide Act 2007 – an offence will be committed where failings by senior management are a substantial element in any gross breach of the duty of care owed to the organisations employees or members of the public, which results in death.

To assist new directors in complying with their duties, companies should provide them with a copy of the company's constitutional documents. In addition, a company may provide protection to a director by providing an indemnity in the articles and, by taking out insurance cover for its directors against most of their liabilities (although insurance will not cover loss due to fraud or dishonesty, wilful default or criminal behaviour).



If you have any queries or require further details on the above or on any aspect of company law then please contact Dale Band at QualitySolicitors Nalders.

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This note is intended to give general information about directors' duties and is not intended to apply to specific circumstances. Its contents should not be regarded as constituting legal advice or a complete statement of the law and no responsibility can be accepted for action taken solely upon reliance of this information. You are advised to seek specific legal advice on any specific problem that arises.

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