

## Duties of Directors

### Statutory General Duties

The Companies Act, 2006 sets out directors duties for the first time. Directors under Companies legislation, include persons appointed as directors and also persons who fulfil the role of directors i.e. shadow or de facto directors. The statutory statement of company directors duties largely follows existing common law and equitable rules on the subject. The new statutory duties are subject to such rules of laws as exists

Directors have the following general duties;

- to act within their powers
- 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 in proposed transactions

The general duties of directors apply equally to shadow directors as well as appointed directors. Company duties are owed by the directors to the company. The duties are not owed to members or to creditors, in the absence of specific circumstances creating such a duty.

The obligation to act within the company's powers and to only act for the purposes which they are conferred, substantially restates existing law. It has always been the case that directors have a duty to act in good faith, in the interests of the company. Directors must not act for an improper purpose and must exercise their powers for bona fide legitimate purposes in the interests of the company.

The duty to promote the success of the company is a new departure which reflects the existing duties. Directors are obliged to promote the success of the company for the benefit of the members as a whole, having regard to the likely consequences of any decision in the long run, the interests of employees, the need to foster business relationships, the impact on the environment, and the need to act fairly between members.

In the 1980s, a provision was introduced whereby directors were to consider the interests of employees and creditors. The Companies Act, 2006 require the directors to consider stakeholders, other than members. This is expressed in terms of the directors having regard to these particular factors. The duties to have regard to these factors are subordinate to the overriding duty to act as the director, acting in good faith, considers to be in the company's best interest.

There is a general duty to act and exercise independent judgement. This is not infringed by acting in accordance with an agreement duly entered by the company which restricts the future exercise of discretion by the directors or in the way authorised by the company's constitution.

## **Director's Transactions with Company**

A director is obliged to disclose his interest in any proposed transaction. A director who has a stake in a proposed transaction is prohibited under the standard draft Articles from participating in or making a decision concerning it, if the director's interest is reasonably likely to give rise to a conflict of interest.

An arrangement between a director of a company or its holding company or a person connected with such director, whereby the director or the company is to acquire a substantial non cash asset must be approved by the shareholders. An arrangement can include an understanding which does not have legal effect. A non cash asset is any interest in property other than cash, if it exceeds the lower of £100,000 or 10% of the company's net assets as shown in the most recent statutory accounts.

The approval of the shareholders to the company is required for a loan to a director of the company or its holding company or to certain persons connected with them. A loan by the company to a director of its holding company requires the approval of both the members of the holding company and the company itself unless it is a wholly owned subsidiary. The same rules applies to guarantees giving a security in connection with a loan.

Connected persons include members of the family and any company to which the director is connected. A director is connected if he and other connected persons control or can control the company. It also includes trustees of a trust from which the director may potentially benefit apart from a share scheme or pension scheme. Also included are partners in a business with the director.

The requirement also covers arrangements under which a person is to make the loan for a director of a company, a holding company return for benefit from the company or an associated company. Before the Companies Act, 2006 loans were prohibited and subject to criminal sanctions.

There are exceptions for the requirement to obtain shareholders approval, which include the following.

- expenditure in connection with company business threshold £50,000;
- advances to directors to help them fund their defence against proceedings brought against them for negligence, breach of duty or regulatory investigations
- minor and business transactions - the exception for loans or quasi-loans of small amounts has been extended to £10,000 and, for minor credit transactions to £15,000;
- credit transactions entered into by a company in the ordinary course of the company's business and on arm's length terms;
- intra-group transactions

The rules for public companies are more restrictive. Shareholders approval is also required for a wider categories of transactions with directors or persons connected with them.

## **Companies, Employment and Taxation Law**

Directors must ensure the company obeys the law, including company law, health, safety, employment law and taxation legislation. Under some legislation, directors can be subject to criminal prosecution for breach of these laws. In addition it may be grounds by which they may be disqualified or be made personally liable for the company's debts.

Directors have obligations under employment law in dealing with employees. Under certain circumstances, directors can be found personally liable for unfair dismissal, racial or sexual discrimination or unfair work practices. Directors are obliged to ensure that the correct amount of tax, VAT and national insurance are paid and on time. Failure to carry out any of these duties can result in criminal prosecution.

Although the company secretary is primarily responsible for making returns to Companies House, directors can also be held responsible. Directors should check and verify the annual returns. This shows information on directors, shareholders etc. They must ensure the company produces and files an annual report and accounts.

---

*This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.*

*This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.*

*While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.*