

Guide to the duties and responsibilities of directors and liability prevention guidelines

DIRECTORS & OFFICERS

It is essential that anybody who becomes a company director is aware of and complies with their legal obligations. This briefing note provides directors with an overview of the key general duties that they owe to their company and some practical tips to avoid claims.

What are my general duties under the Companies Act 2006?

The general duties owed by a director to its company are set out in the Companies Act 2006. These general duties are owed to the company of which you are a director and not to other group companies or individual shareholders.

AS A DIRECTOR YOU MUST:

1. **Act within powers.** You must act within the company's constitution and only exercise your powers for the purposes for which they were given. The company's constitution includes its articles of association and any resolutions and agreements affecting a company's constitution.
2. **Promote the success of the company.** You must act, in good faith, in a way you consider would be most likely to promote the success of the company for the benefit of the company as a whole.

Within this context, you must consider (among other matters): the likely consequences of any decision in the long term, the interests of the company's employees, the need to foster the company's business relationships with suppliers, customers and others, the impact of the company's operations on the community and the environment and the need to act fairly as between the shareholders of the company.

3. **Exercise independent judgement and make your own decisions.** This does not prevent you from relying on advice, so long as you exercise your own judgement on whether or not to follow it.
4. **Exercise reasonable care, skill and diligence.** You must exercise the same care, skill and diligence that would be expected of a reasonably diligent person with:
 - a. the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as you. For instance, if you are acting as a finance director, expectations regarding what is 'reasonable' will be judged accordingly and you will be expected to have the qualifications and skills necessary for the role; and
 - b. the general knowledge, skill and experience that you actually possess.
5. **Avoid conflicts of interest.** You must not place yourself in a position where there is a conflict, or possible conflict, between the duties you owe to the company and either your personal interests or other duties you owe to a third party.

The prohibition will not apply if the company consents (and consent meets the necessary formal requirements).

Examples of arrangements which may potentially give rise to a conflict situation are: holding multiple directorships, holding a personal interest in a transaction, holding advisory positions in other companies, and profiting as a result of your directorship. You should also consider if any of these situations apply to a person connected with you.

6. **Not accept benefits from third parties.** You must not accept any benefit (including a bribe) from a third party given because you are a director or by reason of you doing anything as a director.
7. **Declare an interest in a proposed or existing transaction or arrangement with the company.** You must declare to the other directors the nature and extent of any interest, direct or indirect, in a proposed transaction or arrangement with the company. This duty is not infringed if your interest in the transaction cannot reasonably be regarded as likely to give rise to a conflict of interest.

What are my other duties and responsibilities outside the Companies Act 2006?

Obligations are also imposed on you as a director from other sources beyond companies legislation.

Some examples are:

1. The duty of confidentiality. You must not disclose the company's confidential information.
2. The duty to consider or act in the interests of creditors when solvency is threatened or the company is insolvent.
3. The duty to ensure the company complies with its obligations relating to the health, safety and welfare at work of its workers under health and safety legislation.
4. The duty to comply with environmental legislation and anti-corruption legislation.

What practical steps should I take to protect myself against claims?

As a director you should:

1. Know your duties. Ensure you are fully aware of your duties under the Companies Act 2006 and elsewhere and what your specific role entails.
2. Ensure that management, those employees responsible for preparing board papers and presentations, and others involved in governance, are also aware of the duties of directors.
3. Act within your powers. Familiarise yourself with the constitution of the company and in particular any limitations on the powers of the company or the directors.
4. Determine whether the articles of the company should be amended to, for example, provide for specific conflicts of interest such as multiple directorships or shareholdings on companies, or to allow a director to benefit from benefits of a certain value/reasonable corporate hospitality.
5. Implement guidelines and policies for potentially misunderstood areas. Common areas of risk are conflicts of interests, antitrust compliance, payments that may be unlawful or unethical, including bribes and kick-backs, and harassment and discrimination.
6. Review the company's policies and minutes of meetings and determine how the duty to promote the success of the company will be complied with and documented (minutes, briefing papers, presentations, external advice, business review etc).

7. Self-evaluate. Where you don't understand a decision or matter or it seems inappropriate, don't be afraid to question or challenge it. Periodically analyse the company's performance and the performance of individual members.
8. Practise good record keeping. Document board minutes accurately and precisely so that there will be no question as to what was discussed. Record communications with everyone involved with your day-to-day business (members, vendors, insurers, etc). Keep concise financial records, and always be sure to log complaints and responses for future reference.
9. Consider early resolution options. Promptly investigate warning signs, troubling reports or inconsistent information. Have in place complaints handling processes to address conflicts and grievances. Consider early on the possibility of mediation to resolve any claim or litigation.
10. Engage specialist counsel. Legal advice should be retained for major transactions or in specialist areas. It is cheaper to invest a known amount up front than having to submit a claim to an insurer or hire a solicitor after something has goes wrong.

This article is not intended to constitute a definitive, up-to-date, or complete statement of the law, nor is any part of it intended to constitute legal advice for any specific situation. You should take specific advice when dealing with specific situations and jurisdictions outside England & Wales.

This material has been compiled with the assistance of our PrivateEdge legal panel firms, to learn more about our panel firms visit [here](#)

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