



## **Directors' Duties**

### **1. Directors' General Duties**

The general duties imposed on directors are as follows:

#### **1.1 Duty of skill and care**

Directors are required to exercise the degree of competence which could reasonably be expected from someone with their degree of knowledge and experience.

#### **1.2 Not to exceed or abuse their powers**

Directors owe a general duty of good faith to the company. They must exercise only the powers that have been given to them under the company's Articles of Association and cannot exceed those powers. Also, directors may only use their powers for the purpose for which they were given.

#### **1.3 Not to make a secret profit**

Directors are under an obligation not to misapply company property. Company property can include confidential information such as trade secrets and business opportunities. For example, if a director is in possession of information about business opportunities and has gained this information solely because he holds the office of director in the company, then he should not use that information to his own advantage by entering into a business contract and making a personal profit from it. If he does so he can be made to account to the company for any profit made.

### **2. Statutory Duties**

The Act has codified a number of duties owed by directors to their company.

#### **2.1 Duty to promote the success of the company**

A director must act in the way 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. The duty to promote the success of the company broadly replaces the existing fiduciary duty to act in the company's best interests. However, the meaning of "success" is unclear in the Act. Therefore, the decision as to what will promote the success of the company, and what constitutes such success, is one for the director's good faith judgement.

In fulfilling this duty, a director must have regard (amongst other matters to:

2.1.1 the likely consequences of any decision in the long term

2.1.2 the interests of the company's employees;

2.1.3 the need to foster the company's business relationships with suppliers and others;

- 2.1.4 the impact of the company's operations on the community and the environment;
- 2.1.5 the desirability of the company maintaining a reputation for high standards of business conduct; and
- 2.1.6 The need to act fairly as between the members of the company.

The list of factors, which directors are required "to have regard to" is not exhaustive. In addition, in having regard to the factors listed, the duty to exercise reasonable care, skill and diligence will apply. This list is rather onerous for directors to adhere to and may expose directors to personal liability.

## 2.2 Duty to act within powers

A director must act in accordance with the company's constitution and must only exercise his powers of their proper purpose. The Act defines a company's constitution for the purposes of this duty, as including the company's memorandum and articles of association, decisions taken in accordance with the articles of association and other decisions taken by the members or a class of them if they can be regarded as decisions of the company.

## 2.3 Duty to exercise independent judgement

A director must exercise independent judgement. This duty is not infringed by a director acting in accordance with an agreement entered into by the company that restricts the future exercise of the director's discretion or in a way authorised by the company's constitution. The duty does not confer a power on the directors to delegate, nor does it prevent a director from exercising a power to delegate conferred by the company's constitution, provided that its exercise is in accordance with the company's constitution.

## 2.4 Duty to exercise reasonable care, skill and diligence

A director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with the general knowledge, skill and experience that may be reasonably expected of a person carrying out the functions of the particular director. In applying this test regard must also be had to the experience of the particular director, including his specific responsibilities and the circumstances of the company.

## 2.5 Duty to avoid conflicts of interest

A director must avoid a situation in which he has or may have a conflict of interest with the interests of the company. This duty is not infringed by a director if the other directors of the company authorise a conflict of interest which has been disclosed to the board by the director.

## 2.6 Duty not to accept benefits from third parties

A director must not accept a benefit from a third party conferred by reason of his being director where this is likely to give rise to a conflict of interest.

## 2.7 Duty to declare an interest in proposed transaction or arrangement with the company

If a director is in any way, directly or indirectly, interested in a proposed transaction or arrangement which the company is proposing he must declare the nature and extent of his interest to the other directors before the company enters into the transaction or arrangement. Failure to declare such an interest is a criminal offence