



Myerson Corporate

Directors' duties under the
Companies Act 2006

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Directors' duties under the Companies Act 2006

UK statutory directors have a number of legal responsibilities under the Companies Act 2006 which must be complied with. There are many other specific duties and obligations which must be observed in connection with this role like filing accounts and ensuring compliance with a wide variety of further laws and regulations such as those relating to insolvency.

The below is a non-exhaustive guide to the general standards a statutory director must adhere to and the facts of each circumstance and context in which a statutory director acts are also salient points to consider when applying the following duties:

Directors must act within their powers

A director of a company must act in accordance with the company's constitution and only exercise his/her powers for the purposes for which they have been conferred.

Duty to promote the success of the company

A director must act (in good faith) in a way which would most likely promote the success of the company for the benefit of its members as a whole. In so doing, the director must have regard to:

- 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
- The desirability of the company maintaining a reputation for high standards of business conduct
- The need to act fairly as between the members of the company

The duty is subject to any enactment or the rule of law requiring directors in certain circumstances to consider or act in the interests of the creditors of the company.

Accordingly, the duty is displaced when the company is insolvent and may be modified by an obligation to have regard to the interests of creditors as the company nears insolvency.



Directors must exercise independent judgment

Directors must exercise their powers independently, without subordinating their powers to the will of others.

For example, a director could not agree with a third person (such as his or her appointing shareholder) to vote at board meetings in any particular way, even if voting in that way would not otherwise have breached his or her duties to the company.

This duty will not prevent directors relying on advice, as long as the directors exercise their own judgment in deciding whether or not to follow the guidance.

Directors must 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 both:

- The general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions conducted by the director about the company (the objective test).
- The general knowledge, skill and experience that the director actually has (the subjective test).

So, at a minimum, a director must display the knowledge, skill and experience set out in the objective test, but where a director has specialist knowledge, the higher subjective standard must be met.

Directors must avoid conflicts of interest

A director must avoid situations in which they have or can have a direct or indirect interest that conflicts with, or may conflict with, the company's interests. That applies, in particular, to the exploitation of property, information or opportunity, and whether or not the company could take advantage of the property, information or opportunity.

The duty will not be infringed:

- If the situation cannot reasonably be regarded as likely to give rise to a conflict of interest.
- If authorisation has been given by directors who are genuinely independent (in the sense that they have no direct or indirect interest in the transaction); and
- authorisation may be given unless the company's constitution invalidates such authorisation.

Directors must not accept benefits from third parties

This is the fiduciary rule prohibiting the exploitation of the position of director for personal benefit.

Directors must not accept any benefit (including a bribe) from a third party which is conferred because of his or her being a director or doing or not doing anything as a director.

Directors must declare any interests in a proposed transaction or arrangement

Directors 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. The director need not be a party to the transaction for the duty to apply.

The declaration must be made before the company enters into the transaction or arrangement.

No declaration will be required:

- Where the director is not aware of his or her interest or where the director is not aware of the transaction or arrangement, but directors will be treated as being aware of matters of which they ought reasonably to be aware.
- If the interest cannot reasonably be regarded as likely to give rise to a conflict of interest, if the other directors are already aware of it, or if it concerns the terms of the director's service contract which have been (or are to be) considered at a board meeting or board committee.
- Where the company has only one director.

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If you would like further information about how we can help you, or if you have any questions, please don't hesitate to contact a member of our Corporate Team today.

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