

Directors' Duties

By Emma Gallagher

Directors

Signing up to become a company director should be given careful consideration. It should not be a decision taken lightly. Many people are agreeing to be directors and may not fully understand their legal responsibilities.

DIRECTORS' DUTIES

Companies Act 2006 lays out 7 duties which directors owe to their company.

In addition to reporting and administration requirements, directors have the following duties outlined in law:-

Duty to act within their powers

The directors must ensure that all decisions are within the scope of the objects and powers of the memorandum and articles (or the articles if incorporated after 1 October 2009) of the company and ensure that proper resolutions are passed.

Duty to promote the success of the company

Directors are required to act in good faith in a way which they consider would be most likely to promote the success of the company for the benefit of achieving the company's purposes. Directors have to consider the long-term implications of their decisions, and have to take into account the interests of employees, suppliers, customers, the community and the environment, maintaining high standards of business conduct and the need to act fairly between members of the company.

Duty to exercise independent judgement

A director is required to exercise independent judgement but not contrary to any provisions authorised in the memorandum and articles (or articles if incorporated after 1 October 2009).

Duty to exercise reasonable care, skill and diligence

Directors must exercise the care, skill and diligence which would be exercised by a reasonably diligent person: with the general knowledge, skill and experience that the director has or which may reasonably be expected of a person carrying out the functions carried out by a director in relation to the company.

Duty to avoid conflicts of interest

A director must avoid a situation in which he/ she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. This applies in particular to the exploitation of any property, information or opportunity. It will be up to the directors to exercise their own judgement to resolve any conflicts that arise.

An ex-director is still subject to this duty if he/ she became aware of a conflict of interest before he/she ceased to be a director.

Duty not to accept benefits from third parties

A director is not permitted to accept a benefit from a third party conferred by reason of them being a director or

his/her doing (or not doing) anything as a director.

Duty to declare an interest in proposed transactions with the company

Directors must declare to the other directors the nature and extent of any interest, direct or indirect, in a proposed contract, transaction or arrangement with the company (this includes when a person connected with the director stands to benefit).

How will these new duties be enforced

By the company itself. However, there is the possibility of what is known as a 'derivative action', under which a shareholder (rather than the company) takes action against a director, even though a majority of shareholders may not be in favour. The shareholder will, however, need the permission of the court to take it forward.