



# The Companies Act 2006

## General duties of a director

September 2009

This briefing is intended to remind directors of the general duties owed by them to their company under sections 170 to 182 of the Companies Act 2006.

### A director must

- **Act within his powers** – a director must act in accordance with the company's constitution, and only exercise powers for the purposes for which they were given.
- **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.
- **Exercise independent judgment** – a director must exercise independent judgement.
- **Exercise reasonable care, skill and due diligence** – a director must exercise the same care, skill and diligence that would be exercised by a reasonably diligent person with (i) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as the director in relation to that company and (ii) the general knowledge, skill and experience that the director actually has.
- **Avoid conflicts of interest** – a director must avoid a situation in which he 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, regardless of whether the company could take advantage of it. The duty does not apply to a transaction or arrangement with the company.
- **Not accept benefits from third parties** – a director must not accept a benefit from a third party conferred by reason of being a director or doing (or not doing) anything as a director.
- **Declare interests in proposed transactions or arrangements with the company** – a director who is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, must declare the nature and extent of that interest to the other directors before it is entered into.
- **Declare interests in existing transactions or arrangements with the company** – a director who is in any way, directly or indirectly, interested in an existing transaction or arrangement with the company, must declare the nature and extent of that interest to the other directors as soon as reasonably practicable. The declaration must be made in a certain manner set out in the Companies Act 2006.

### Other duties

The general duties set out in sections 170 to 182 of the Companies Act 2006 are not a complete list of all duties owed by directors. Directors need also to ensure that they act in accordance with any other duties applicable to them.

### Insolvency

Where a company is insolvent or threatened by insolvency, a director may need to consider and act in the interests of the creditors of the company in priority to the duty to promote the success of the company. In particular, a director must take every step to minimise any loss to creditors of the company at any time when he knows or ought to conclude that there is no reasonable prospect of the company avoiding going into insolvent liquidation.

## Promoting success - relevant factors

When considering what is most likely to promote the success of the company, a director must have regard (amongst other matters) 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; and
- the need to act fairly as between members of the company.

This statutory list is not intended to be exhaustive and other relevant factors should also be considered.

## Exceptions and relaxations

The Companies Act 2006 includes certain exceptions and relaxations to the general duties. In particular:

- the duties to avoid conflicts, declare interests and not accept third party benefits do not apply if the relevant matter cannot reasonably be regarded as likely to give rise to a conflict of interest;
- the duty to exercise independent judgement is not infringed by a director acting (i) in accordance with an agreement entered into by the company which restricts the future exercise of discretion by its directors; or (ii) in a way authorised by the company's constitution;
- subject to satisfaction of certain requirements, the duty to avoid conflicts of interest is not infringed if the matter giving rise to the conflict has been authorised by directors who do not have that conflict;
- a director need not declare an interest in a transaction or arrangement with the company (i) if that director is unaware of the interest; or (ii) to the extent the other directors are already aware of it. For these purposes, directors are treated as being aware of matters of which they ought reasonably to be aware;
- subject to satisfaction of certain requirements, a director may make a general declaration to the effect that he is to be regarded as interested in any transaction or arrangement that may, after that date, be made with a specified company or firm in which he is interested or specified person with whom he is connected.

## Updating declarations

If a director's declaration of interest regarding an existing or proposed transaction or arrangement with the company proves to be, or becomes, inaccurate or incomplete, then he must make a further declaration.

## Further information

If you would like further information in respect of directors' duties, please contact your usual contact at Burges Salmon or one of the following:

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