Directors Duties

Company directors are representatives and offices of the company and sit on the board. The board exercises the day to day management of a company and is responsible for the overall strategy of a company. The directors are required to attend board meetings and vote on the proposed resolutions of the board. In exercising their role, directors owe a duty to the company. Their duties are set out within section 171 to section 177 of the Companies Act 2006. Directors should be aware of and, more importantly, apply the duties when carrying out their role.

The duty to act within your powers

A director must act in accordance with a company's constitution, i.e. the articles and any other relevant agreements such as shareholders agreements, joint venture agreements etc. They must only use their powers for the purposes that they were conferred. An example of a breach of this duty would be issuing shares in order to prevent a company takeover, or to purely strengthen and maintain a director's control of a company (if they are also a shareholder). This would breach the duty because the purpose of issuing shares is to raise capital.

The duty to promote the success of the Company

A director must act in good faith in a way that it is most likely to promote the success of a company. To comply with this duty a director should consider the long term consequences of any decisions, the interests of employees, the effect on relationships with customers and suppliers, the effect of the environment and the local community, the need to maintain the reputation of a company and the need to act fairly between members of the company. This list is not exhaustive but is designed to highlight areas of particular importance to responsible business behaviour. Other relevant factors should also be properly considered.

The duty to exercise independent judgement

Directors must exercise independent judgment and make their own decisions. This is intended to avoid factionalism within the boardroom. This does not prevent a director from acting in accordance with an agreement entered into by the company or in accordance with a company's constitution.

The duty to exercise reasonable care, skill and diligence

A director must exercise the same care, skill and diligence that would be exercised by a reasonably diligent person with:

- 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 the company; and
- the general knowledge, skill and experience that the director actually possesses.

The expected standards are therefore both objective and subjective. Accordingly, this duty could be breached if more knowledge or skill could reasonably be expected of a director, even if they do not actually have that knowledge or skill.

The duty to avoid conflicts of interest

A director must avoid situations in which they have a direct or indirect interest that conflicts or may conflict with the interests of a company. The duty specifically references situations involving the exploitation of property, information or opportunities. Examples of potential conflicts may include multiple directorships or transactions involving connected persons (e.g. family members or business associates).

Any potential conflict of interest can of course be authorised by an ordinary resolution of non-conflicted directors. You should also consider the company's articles as it is common that certain conflict situations will already be authorised via the articles, for example being conflicted due to an interest in a transaction.

Self regulation is a necessity for this duty. Even if a potential conflict has been authorised or is permitted directors should still be mindful of their conduct when dealing with company matters and ensure to comply with their obligations, the articles and all other constitutional documents.

The duty not to accept benefits from third parties

A director is prohibited from accepting a benefit from a third party conferred due to their position as a director i.e. a bribe or a secret profit. There will not be a breach if the benefit cannot reasonably be regarded as giving rise to a conflict. Whether this will apply will depend on the circumstances in question.

The duty to declare interest in transactions or arrangements

A director must declare their interest in a proposed transaction. All board meetings should allow for declarations of interests to be declared at the commencement of the meeting and prior to the discussion of the transaction taking place. A director may also provide notice in writing of their interest to their fellow directors, or provide a general notice of their interest in a specific company or organisation so that they are regarded as interested in any transaction or arrangement involving that company or organisation.

This duty is waived if the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest, the board is already aware of the interest or ought to be aware of it, or the interest arises from the director's service contract with the company and the board are therefore aware of it. This is a relatively common occurrence at board meetings.

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