

Commercial

Commercial Update – directors’ duties – part one

Being a director is a role which comes with a number of responsibilities. Laws which govern how directors must carry out their roles can vary greatly between different countries, so making sure that you comply with your duties as a director can be tricky, especially if you are new to being a director of a UK company.

The consequences of not getting it right can be severe and may include civil action being brought against you personally, which could mean you having to pay damages or compensation, and being disqualified from acting as a director.

This is the first in a series of articles about the responsibilities of directors and it covers directors’ general duties.

As a director, you are responsible for the day to day management of the company and also for making sure that the company complies with its legal obligations. If you are connected to the company in some other capacity, for example, if you are also a shareholder, you must take extra care when carrying out your duties as a director so that you can separate your roles and wear the right ‘hat’ for each role.



The Companies Act 2006 sets out the general duties all directors must comply with. All of the duties should be taken into account when you make decisions. If you think that there is, or there might be, any conflict between the duties, then you should weigh up the different duties in the context of the situation.

The general duties require you to:

- Act within your powers. This means, in short, complying with resolutions, decisions and the company’s articles and only exercising your powers for proper purposes.
- Promote the success of the company. To do this you should give consideration to what is in the best interests of the company’s shareholders, taking into account a number of specific factors. This approach is different in other jurisdictions, so it is important to be clear on exactly what this duty involves.
- Exercise independent judgment. You must, in effect, make your own decisions. Whilst you can take advice from another person, you should exercise your own judgment in deciding to take the advice and whether to follow it.
- Avoid conflicts of interest. This means avoiding a situation or interest which, either directly or indirectly, conflicts or may conflict with the interests of the company. The duty is quite wide (and so it isn’t possible to include everything here) but red flags to watch out for include whether there is the potential for any property, information or opportunity belonging to the company to be exploited by you personally or a person or other company you are connected with.
- Not accept benefits from third parties. This relates to benefits which are connected with your role as a director or you doing (or not doing) something as a director.
- Declare interests in proposed transactions or arrangements. If you have any interests in any transaction or arrangement of the company, or stand to personally profit in some way, you must declare the nature and extent of your interest to the other directors.

Practical steps you can take taking account of your duties when making decisions, attending training on your duties as a director, making sure you have sufficient and accurate information to assist you with making decisions, and implementing internal processes and policies to make sure you are able to comply with your duties.

We provide services which can assist with this issue, including training for directors and preparing internal guidance, policies and procedures. If you would like further advice about these services or our services generally please contact the Commercial team at 3HR.

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