



Directors' Statutory Duties

Company & Commercial
Services

The Companies Act 2006 specifies seven general duties which are owed by each director of a company to that company:

1 **Duty to act within powers**

A director must act in accordance with the company's constitution (usually its memorandum and articles of association) and only exercise powers for the purposes for which they are conferred.

2 **Duty to promote the company's success**

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 and, amongst other things, 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 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

a need to act fairly as between members of the company.

Although this list is not exhaustive, the use of the word "must" clarifies that directors will need to have regard to each of these factors, if relevant, when making decisions. Directors would be well advised to keep thorough records of any important decisions, especially if they are or may become controversial or risky.

3 **Duty to exercise independent judgement**

A director must exercise independent judgement, although this duty is not infringed by his acting:

in accordance with an agreement duly entered into by the company that restricts the future exercise of directors' discretion; or

in a way authorised by the company's constitution.

The general premise is clear; each and every director of a company must "vote his conscience", without reference to extraneous third party interests.

4 **Duty to exercise reasonable care, skill and diligence**

A director must exercise the 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 functions carried out by the director in relation to the company; and

the general knowledge, skill and experience that the director has.

This is an interesting inter-mix of both objective and subjective tests. Not only must the director apply his own knowledge, skill and experience (as these actually exist), but he must also meet an objective test of what might "reasonably be expected" of him, given the office he holds.

5 Duty to avoid conflicts of interest

A director must avoid a situation in which he has, or may have, a direct or indirect interest that conflicts, or may possibly conflict, with the interests of the company.

This duty applies in particular to the exploitation of any property, information or opportunity (regardless of whether the company could take advantage of the property, information or opportunity) but does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.

This duty is not infringed:

if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

if the matter has been authorised by the other directors of the company (without counting the vote of the director in question, or of any other interested director).

This derives from well established law relating to the making of secret profits or otherwise engaging in activities which create conflicts of interest between a director personally and the company. The wording "possibly may conflict" however has led many commentators to believe the duty is now more onerous. Directors will need to ensure that proper authorisations are in place to permit any potential conflicts. This will be particularly important where individuals hold a number of directorships and may result in a reluctance by some to take on multiple directorships. Amendments to a company's articles may however alleviate some of those concerns.

6 Duty not to accept benefits from third parties

A director must not accept a benefit (including a bribe) from a third party which is conferred because he is a director or because of his doing (or not doing) anything as a director. This duty is not infringed if the acceptance cannot reasonably be regarded as likely to give rise to a conflict of interest and does not include benefits set out in a director's service contract. Shareholders can however authorise benefits which would otherwise be a breach of this duty.

7 Duty to declare interest in proposed transaction or arrangement

If a director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors before the company enters into the transaction or arrangement, although there is no requirement to declare an interest:

of which the director is not aware;

where the director is not aware of the transaction or arrangement in question (although a director is to be treated as being aware of matters of which he ought reasonably to have been aware);

if it cannot reasonably be regarded as likely to give rise to a conflict of interest; or

if, or to the extent that, the other directors are already aware of it.

If a declaration made proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

The duties set out in points 5, 6 and 7 above are not due to come into force until 1 October 2008 but, in the meantime, directors are under similar common law duties.

Other Considerations

It is important to note that these statutory duties are not exhaustive and directors still owe other duties such as:

those set out in the company's articles of association;

those set out in the director's service agreement;

others contained in the Companies Act 2006 (for example, the duty to prepare and deliver accounts); and

other duties which have not been codified (for example, the duty to consider creditors interests in times of threatened insolvency).

This note highlights some of the main aspects of a director's duties. It does not amount to a comprehensive note of all duties and liabilities. If you require any further specific advice please contact Douglas Cooper at douglas.cooper@parissmith.co.uk

Paris Smith April 2008



Paris Smith LLP
Number 1 London Road
Southampton
Hampshire SO15 2AE

t: 023 8048 2482

f: 023 8063 1835

DX 38534 SOUTHAMPTON 3

e: info@parissmith.co.uk

www.parissmith.co.uk