

Directors' duties - a quick guide

Directors, and in some cases shadow directors, owe many duties to a company. Many of those duties have been developed by the courts over hundreds of years and some have now been enshrined in legislation. A shadow director is explained below. The duties of a director set out in the Companies Act 2006 (**CA 2006**), ss 171-177 (often known as the general duties) are considered in this guide.

The general duties are not intended to be an exhaustive list of all of the duties owed by a director. There are others directors' duties that arise, as well as various legal requirements that a director must comply with in order to avoid liability, eg a director should be mindful of:

- other duties they may have under the CA 2006, such as the duty to call meetings required by members or the duty to keep accounts,
- potential liabilities in an insolvency situation (when they may need to take into account the interests of creditors), eg liability for fraudulent trading, wrongful trading, transactions that were carried out at an undervalue,
- potential liabilities under environmental legislation, eg offences committed with the consent, connivance or neglect of any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity,
- potential liabilities under the Data Protection Act 1998, and
- potential personal liability under the Bribery Act 2010.

In addition, as the general duties are not a comprehensive statement of all the duties imposed on directors, common law rules and other legal principles that have been developed by the courts, those remaining laws and principles still exist and catch directors to the same extent as they did before.

Who are directors?

Directors are the agents of a company who manage its day-to-day business. They include any person occupying the position of director, whether or not they have that title.

A shadow director of a company is a de facto director even if they do not have the formal position. There are some limited exceptions but basically a person whose directions or instructions the directors of the company are accustomed to act in accordance with.

What are the general duties?

The general duties are owed to the company and are:

- **the duty to act within powers** -- this duty requires a director to act in accordance with the company's constitution (i.e. the company's articles of association, and any resolutions and agreements affecting a company's constitution) and only exercise powers for the purposes for which they are conferred;
- **the duty to promote the success of the company** -- this duty is to act in a way the director 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 in doing so have regard to a non-exhaustive list of matters including the impact of the company's operations on the community and the environment;
- **the duty to exercise independent judgment** -- this duty is not infringed by acting in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors or in a way authorised by the company's constitution;
- **the duty to exercise reasonable care, skill and diligence** -- this duty comprises two tests: it requires a director to 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 of the director in relation to the company (objective test) and to use the general knowledge, skill and experience that the particular director has (subjective test);
- **the duty to avoid conflicts of interest** -- this duty requires a director to avoid a situation in which the director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company and is subject to various exceptions;