

COMPANIES ACT 2006 DIRECTORS DUTIES - KEY FACTS

The Companies Act 2006 sets out a detailed statutory framework relating to directors' duties (the "General Duties"). It does not exhaustively cover all the duties a director may owe to the company. For example, a director may have enlarged duties and responsibilities due to his position and functions (eg 'approved person').

The General Duties apply to all directors of a company, including non-executive directors and shadow directors. Other than in limited circumstances, the General Duties are owed to the company, rather than directly to the shareholders.

The Duties

The Act codifies seven General Duties – these are the duty to:

- > Act within powers;
- > Promote the success of the company;
- > Exercise independent judgement;
- > Exercise reasonable care, skill and diligence;
- > Avoid conflicts of interest;
- > Not to accept benefits from third parties; and
- > To declare interests in proposed transactions or arrangements with the company.

A list of factors directors should consider when exercising their duty to "*promote the success of the company*" include:

- > Likely consequences of any decision in the long term;
- > Interests of the company's employees;
- > Need to foster the company's business relationships with suppliers, customers and others;
- > Impact of the company's operations on the community and the environment;
- > Desirability of the company maintaining a reputation for high standards of business conduct; and
- > Need to act fairly as between members of the company.

Key considerations for Directors

- > Insist on having all the relevant information before making decisions at board level;
- > Make your own commercial judgments;
- > Keep notes!
- > Remember that if a company goes into insolvent liquidation, the liquidator may well look deeply into courses of actions which were previously taken by directors;
- > Review company constitution to clarify how issues such as directors' conflicts and directors' indemnities can be dealt with;
- > Check directors' and officers' insurance cover is up to date/adequate;
- > Check current board procedures and practices and ensure proper Board Minutes are kept.

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