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## **7 DUTIES OF A COMPANY DIRECTOR - INFORMATION FOR CLIENTS Walsh West Certified Chartered Accountants 2021**

### **What are the directors duties?**

**These 7 statutory duties** are owed by each director to the company and form the basis of what being a company director is all about.

#### **Your company's constitution**

The first of these duties is that a director must act within their powers under the company's constitution. The most important part of the company's constitution is the articles of association. These are an important set of rules for your company and for your board.

When you registered the company, you may have used the model articles available for private or public companies. Alternatively, you may have created your own tailored articles, normally with the help of a legal advisor.

As a director, it's important to be familiar with the articles of association as they may constrain your decision-making powers in certain ways. If you exceed your powers, then related decisions could be reversed and you might even have to compensate the company for any resulting financial losses.

#### **Promoting the success of the company**

The second major duty of a company director is to promote the success of the company. This is probably the most well-known of the 7 duties.

From the beginning of 2019, a new reporting requirement means that larger companies (with more than 250 employees) will have to explain how they have fulfilled this duty in their annual report.

The duty states a director must act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members (shareholders) as a whole. When making decisions, directors must also consider the likely consequences for various stakeholders, including employees, suppliers, customers and communities. They should also consider the impact on the environment, the reputation of the company, company success in the longer term and all of the shareholders (including minority shareholders).



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A duty to promote the success of the company may seem like an obvious task for a director. However, it brings with it a number of implications.

Board decisions can only be justified by the best interests of the company, not on the basis of what works best for anyone else, such as particular executives, shareholders or other business entities. But directors should be broad minded in the way that they evaluate those interests – paying regard to other stakeholders rather than adopting a narrow financial perspective.

### **Independent judgement**

The third major duty requires directors to exercise independent judgement. Directors are meant to develop their own informed view on the company's activities.

Directors should not be delegates who simply implement the commands of other parties (such as major shareholders). Nor should they avoid their responsibility to make independent decisions by relying on the knowledge or judgement of other directors or experts.

A director needs to form their own view, and this may require some effort – especially if they are not already familiar with key aspects of the company's activities.

### **Exercise reasonable care, skill and diligence**

There was a time when directors could be appointed purely for their name or reputation, without the expectation that they would actually do any work as a board member. Those days are now over due to the duty for directors to exercise reasonable skill, care and diligence in their role.

The benchmark is that of a reasonably diligent person with the general knowledge, skill and experience that could reasonably be expected from a person carrying out the director's functions. Also, directors with specific professional training or skills (such as a lawyer or accountant) are held to a higher standard in related issues than less qualified colleagues.

### **Conflicts of interest and personal benefits**

The remaining 3 legal duties relate to the need for directors to avoid or manage conflicts of interest which may affect their objectivity.

If situations arise which impose multiple claims on a director's attention or loyalty, it is essential that they disclose them to fellow board members. It will then be up to the other non-conflicted board members (or the shareholders, in some cases) to decide how to manage or approve the conflict and maintain the integrity of the board's decision-making process.



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Examples of conflicts of interest include situations where the director has relationships of a business or personal nature with persons or entities that are affected by the company's activities. It could also relate to situations where the director may be considering taking advantage, on a personal basis, of property, information or opportunity which belongs to the company.

Gifts or benefits from third parties are also a potential threat to a director's objectivity. Most importantly, directors have a statutory duty to disclose any direct or indirect interest in proposed or existing transactions or arrangements with the company.

### **Keeping a record**

How can a director prove they've fulfilled these legal duties? One of the important purposes of the minutes of board meetings is to provide a record of the board's decision-making process.

By law, these minutes must be kept for 10 years. Years from now, it may be difficult for you to remember if you fulfilled your directors' duties in respect of some key decision. The minutes can provide vital evidence that you did – something that you may well have cause to be grateful for.

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For initial advice about Accounting and Taxation; call our team on 0203 488 7503, 01992 236 110 or contact us by email at [welcome@walshwestcca.com](mailto:welcome@walshwestcca.com) or via our website [www.walshwestcca.com](http://www.walshwestcca.com) and we will help you.