

**Top 10 Tips – Directors Duties**

You are probably already aware that directors owe general duties to their company under the Companies Act 2006, but what are these duties and what does it mean in practice?

1. **Duty to make a declaration of interest**

Where a director is directly or indirectly interested in a proposed transaction he must declare the nature and extent of interest to other directors. This declaration should be made at a board meeting orally or in writing *before* the proposed transaction has taken place.

1. **Duty to act within powers**

A director must act in accordance with the company’s articles of association and only exercise its powers for the reason it was given them.

1. **Duty to promote the success of the Company**

Directors must act in a way that he considers would most likely promote the success of the company for the benefit of the shareholders as a whole. Directors should show that their duty to promote the success of the company has been considered when reaching their decisions.

1. **To exercise independent judgement**

A director may take legal and financial advice but this must not affect his ability to exercise his discretion. A director should not allow themselves to be unduly influenced.

1. **To exercise due care, skill and diligence**

A director will be in breach of his director’s duties if he does not exercise due care, skill and diligence. This will be determined by considering what care, skill and diligence you might expect a director to exercise generally and also by looking at the specific knowledge of experience of the individual director.

If the director has delegated his duties to an employee, he is still liable and must exercise their powers of supervision adequately.

An inactive director still owes this duty of care to the company.

1. **Duty to avoid a conflict of interest**

Directors must avoid situations where there is a risk of direct or indirect conflicts of interest. A director must not make a profit from being a director (other than from employment).

An example of this is where a director becomes aware of a business opportunity because of his employment as a director but does not forward the opportunity to the company and uses it for himself.

1. **Duty not to accept benefits from a third party**

If benefits are given to you because a director because of their position or in exchange for doing/not doing something then the director must not accept. This does not apply to corporate hospitality (within reason!).

1. **What to do if you have committed a breach**

If you have committed a breach of any of the above director’s duties, you may remedy this by; accounting to the company for the profits you’ve wrongfully received, returning company property, paying compensation to the company, rescinding contracts which should not have been entered into.

1. **Can you avoid liability for a breach?**

The shareholders may ratify the conduct of a director even if their actions constitute a breach of directors duties, the court may also relieve the director of liability.

It is always advisable that you take minutes of all of the board meetings of the directors and general meetings of the shareholders to keep a record of how decisions were made and by whom.

1. **What should you do if you’re unsure?**

You guessed it; take legal advice.

It is sometimes a criminal offence to breach your duties as a director and not all of them can be ratified by the shareholders or authorised by the other directors. If you are unsure whether your conduct amounts to a breach it is best to seek independent legal advice and, if necessary, remedy the breach as soon as possible.

**Please call 01604 622101 and ask to speak to one of our commercial solicitors if you have any queries.**