



## CPSA Directors' Duties and Responsibilities

### A SIMPLE GUIDE TO DIRECTORS' DUTIES AND RESPONSIBILITIES UNDER THE COMPANIES ACT 2006

This is a basic guide borrowed from the Technical Advisory Service of the ACCA. It is an introduction to a complex subject and is intended to alert members to the actions needed in relation to directors' duties under the Companies Act 2006. Specific advice should be obtained, where necessary.

The Companies Act 2006, sections 170 – 178, sets out the legal responsibilities and general duties of company directors and are known as the Statement of General Duties of Directors. The Act is based on established common law principles and case law, but also includes important reforms which affect all directors – executive or non-executive – in companies of every size.

The Statement of General Duties of Directors took effect on 1 October 2007, with the exception of the duty to avoid conflicts of interest, which came into force in October 2008.

The main principles are summarised below:

**1. The general duties** mean a director must act in the interests of the company and not in the interests of any other parties – including members or other stakeholders

The company comes first. Understanding this principle should make it easier for you to decide how to act when there are a number of interested parties with apparently conflicting interests.

**2. Duty to act within the company's powers**

In addition to the duties and responsibilities imposed on directors by the Act, every company will have its own set of rules known as its 'constitution'. The CPSA is governed by its Articles of Association.

Directors must follow the rules and restrictions contained in the constitution.

They must use the powers delegated to them by the members for the benefit of the company.

**3. Duty to promote the success of the company**

The term 'success' is not defined in the Act because this may vary from company to company. In most cases, however, it is likely to mean sustainable profitability. The underlying principle here is that every director has a legal duty to try to act in such a way which, in their judgement, is most likely to bring 'success' to the company.

#### **4. Duty to exercise independent judgement**

This is self-explanatory but the Act will not be breached if you exercise your duties in line with any prior agreement with the company or with the company's constitution.

#### **5. Duty of skill, care and diligence**

Every director must exercise reasonable care, skill and diligence in everything they do for the company. The duty is broken into two parts:

As a director you must demonstrate the general knowledge and skill reasonably expected of a person carrying out the functions you carry out in relation to the company. Therefore, a managing director will be expected to have a knowledge of all areas of the business or to have engaged people who can help them; and

As a director you must also act in accordance with any specific general knowledge and skills you actually have. Therefore, a director who is a qualified accountant would be expected to show greater general knowledge, skills and interest in relation to financial aspects of the company than another director who was not so qualified.

#### **6. Duty to avoid conflicts of interest**

You must avoid any situations where you have any personal or outside interests which will potentially come into conflict with the interests of the company.

This duty even extends to former directors.

However, this duty is not infringed if:

- the situation cannot reasonably be regarded as likely to give rise to a conflict; or
- the matter has been authorised by the directors, as appropriate to the type of company (public companies must give the directors specific powers in their articles)

#### **7. Duty not to accept benefits from third parties**

A director of a company must not accept a benefit from a third party arising from them being a director; or from their actions as a director.

Any benefits that cannot reasonably be regarded as likely to give rise to a conflict of interest can be ignored.

This duty also applies equally to former directors.

#### **8. Duty to declare an interest in a proposed transaction or arrangement**

The Act states: "If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company he [she] must declare the nature and extent of that interest to the other directors."

The declaration of an interest can be either verbal or written but must comply with the requirements set out in the Act.

## **REFORMS INTRODUCED BY THE 2006 ACT**

A number of important reforms took effect from October 2008:

- Minimum age

The minimum age at which someone can be appointed as a director is now 16 years.

At the same time, the maximum age of 70 for directors of public bodies was abolished.

- Registration and publication of directors' residential addresses

It is no longer necessary to include directors' home addresses on public records. They are able to use a 'service' address such as the company's registered office. However, it will still be necessary to keep a separate register of directors' home addresses.

## **ADDITIONAL DUTIES**

In addition to the duties outlined above, as a director you will continue to have responsibilities and duties to ensure that:

- the company is not wrongfully trading
- the company does not pay an illegal dividend
- you are not illegally involved with 'phoenix' companies – where the assets of a failed company are moved to another legal entity.
- you are not acting in breach of disqualification orders
- accounts are prepared properly, with proper keeping of books and records

You need to be aware that there are civil and criminal sanctions and penalties for breaches of your responsibilities and duties as a director.