# Directors' General duties under the Companies Act 2006

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This guide by **Corporate and** Commercial Solicitor**s**, **Nick Gabay and** Alexander Willingham, discusses the role of a director within a company and the duties and responsibilities they need to consider.

# What do Directors do?

Company directors typically run the operations and management of a company, in doing so they need to adhere to the company's constitution. The board of directors will usually meet and take decisions collectively on any given matter.
The seven duties noted below are often referred to as the 'General Duties'. This is because they are closely linked to the general duty to promote the success of the company.

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# General Duties

## (1) To act within powers

A director must act in accordance with the company's constitution and exercise those powers within the limits for which they were granted.

## (2) To promote the success of the company

A director must act in the way they consider would be most likely to promote the success of the company. The director must consider the following (non-exhaustive list):

- The likely consequences of any decision in the long term.
- The interests of the company's employees.
- The need to foster the company's business relationships with suppliers, customers and others.
- The impact of the company's operations on the community and the environment.
- The desirability of the company maintaining a reputation for high standards of business conduct.
- The need to act fairly between members/ shareholders of the company.

## (3) To exercise independent judgment

A director is required to exercise their own independent judgment.

## (4) To exercise reasonable care, skill and diligence

A director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person.

## (5) To avoid conflicts of interest

A director must avoid situations in which they have a conflict with the company's interests.

### (6) Not to accept benefits from third parties

Directors must not accept any benefit (including a bribe) from a third party.

### (7) To declare any interest in a proposed transaction or arrangement with the company

Where directors are in any way directly or indirectly interested in a proposed transaction or arrangement with the company, they must declare to the other directors the nature and extent of that interest.

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## What are the consequenses of a breach of directors duties?

Directors owe duties to the company; and a breach of those duties could result in the company taking action against a director as follows (non-exhaustive list):

- a director being held personally liable to pay damages to the company;
- an injunction to force the director to do (or stop doing) something that is breaching their duties;
- a transaction the company has signed up to being undone, or a contract they have entered into being ended by a court; and
- a director being required to account for any profits made from a transaction or restore any company property affected by a breach.

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## Directors' responsibility on Insolvency

Directors of companies experiencing financial concerns face additional obligations. Directors may be liable for fraudulent or wrongful trading if the company continues trading when insolvent and the interests of creditors are prejudiced. Importantly, where a company is insolvent or approaching insolvency, the general duty to promote the success of the company is altered so that a director must instead act in the best interests of the company's creditors.

It is advisable to seek legal advice as soon as encountering financial difficulties to avoid potential personal liability in cases of insolvency.

# Mitigating Director's Liability

Considering the above from the outset, directors should seek to understand the extent and scope of their role, obtaining timely and relevant legal advice where required is key along with keeping up to date with commercial developments.
In some cases, directors may be able to mitigate their liability. In certain situations, the court may grant relief from liability if the director has acted honestly and reasonably. In other circumstances, the shareholders of the company may ratify unauthorised acts.

Furthermore, a company may indemnify directors against certain actions brought against them. Finally, it is important to note that a company may choose to take out directors' and officers' insurance. A policy such as this typically deals with directors' liabilities arising from claims of negligence, breach of duty or other default. Standard policy exclusions include fraud, dishonesty and criminal behaviour. Whatever policy is considered the directors should ensure they understand the limitations.


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