

**Here is a checklist of the main statutory duties on a director as set out in the Companies ACT 2006 and some other best practice points to be considered.**

The main point to remember is to treat the company as a separate entity. It has its own rights and can take its own actions against you and others.

1. **Section 171 – Duty to act within powers** – as a Director you should not exceed the powers conferred on you by the company’s Articles of Association. You should always check that you are using the powers conferred on you properly and that the Company does not exceed what it is allowed to do in its Memorandum of Association.
2. **Section 172 – Duty to promote the success of the company** – as a Director you must act in good faith for the success of the company and benefit of the shareholders having regard to the likely consequences of any decision long term. This will include considering the interests of employees, business relationships with suppliers, customers and others, the impact on the community and environment, maintaining the reputation of the company for having high standards of business conduct, acting fairly between members of the company and; subject to the legal requirements, to consider and act in the interests of creditors.
3. **Section 173 – Duty to exercise independent judgment** – the company is a completely separate entity to you as director. Therefore, as a director you must consider whether a deal with the company which you own will be the best deal for the company as opposed to yourself. At the time a decision is made the matters raised in the rest of Chapter 2 of the Act need to be considered so that you are you acting in good faith and solely for the benefit of the company taking all the circumstances into account and not for example, creating a conflict as set out in Section 175 below.
4. **Section 174 – Duty to exercise reasonable skill and care and diligence**– you should act in a manner that any reasonably skilled director would generally act in your particular area of management. You should go to as many board meetings as you can and make sure you know at all times what is happening. As stated, ignorance is

no defence and as a director you will be jointly liable for any mistakes made as well as placing your company at risk of claims against it should it fail to use skill and care in providing its services to others or complying with other statutory requirements for example health and safety (Section 178) for example.

5. **Section 175 – Duty to avoid conflicts of interest** – as a Director you must avoid a situation in which you have or could have a direct or indirect interest that conflicts or may conflict with the interests of the company. If there is a conflict of interest between you (personally) and the company, ensure that the company always wins. The way to avoid there being any issues over conflicts is to disclose all matters to the board of directors so that the company (acting through its directors) can make a decision with all the facts in front of them.
6. **Section 176 – Duty not to accept benefits from third parties** – as a Director you should refrain from dealing in your own interests rather than the company's when dealing with company business and property and must not, for example make a secret profit from any undisclosed and unauthorized transaction or divert work away from the company for your own benefit. Any benefits obtained in this way will have to be account for to the company even if the company benefits as well. You should not accept loans or the benefit of guarantees from the company. This section coincides with and extends Section 175.
7. **Section 177 – Duty to declare the nature and extent of any interest in a proposed transaction or arrangement** – as a director, you must disclose all interests in relation to all transactions for example property, information, shares held irrespective of whether or not the company could take advantage of it. You should obtain directors and shareholders approval when it is required before steps are taken. Again, this coincides with and extends the other duties in Sections 171 to 176 above.
8. **Know your rights as a director and/or shareholder in relation to the calling of meetings, voting etc.** Keep up to date with all the record keeping and administrative requirements set out in the Companies Act and on top of the duties of directors in relation to specific areas applicable to your business such as health and safety,

taxation etc.

9. If you think that the company may not have enough money to cover its debts obtain advice and call us straight away. Do not wait as it could affect your personal liability.

10. In addition to the above, you should remember your contractual duties under your employment contract. Beware of your rights and responsibilities as both an employee and a director.

Keep this checklist of some of the duties of a director in mind as a guide to best practice. It is not a comprehensive list and the law continues to develop as each new case is heard so please call us if you need further assistance or advice and we will be happy to help. This article gives a general overview only. It cannot be relied upon in any particular case.