

Directors' Duties Under the 2006 Companies Act

The recession has coincided with a more stringent regime applying to the duties of directors, as introduced by the Companies Act 2006.

The Act was designed to modernise British company law, making it 'fit for purpose' for the 21st Century. In particular, it has made several changes which affect directors. For example, the duties of directors are now specifically defined. They are:

- (S 171) The duty to act within their powers (the duty to adhere to the company's constitution);
- (S 172) The duty to promote the success of the company. There are six things a director must consider here, including consideration of the company's employees, the long-term consequences of decisions, fairness to members (shareholders) and the impact of decisions on the community and environment;
- (S 173) The duty to exercise independent judgment. This is not as restrictive as it may seem, but means not being the 'yes man' of the person responsible for his or her appointment. It does not prevent having an interest in transactions nor relying on the opinion of an expert where appropriate;
- (S 174) The duty to exercise reasonable skill, care and diligence. This duty has particular implications for non-executive directors, who can no longer afford to take a 'hands-off' approach;
- (S175) The duty to avoid conflicts of interest. This includes conflicts involving connected persons such as family members;
- (S176) The duty not to accept benefits from third parties; and
- (S177) The duty to declare an interest in transactions or arrangements. This includes the duty to declare interests of persons connected with the director.

Directors of companies should ensure that they and their fellow directors are fully aware of the provisions of the Act relating to their duties and comply with them.

Contact us for individual advice.