



CONFLICT OF INTEREST – BOARD AUTHORISATION

A Director has a duty to avoid conflicts of interest wherever possible, but in reality unfortunately this is not always easy to adhere to. Directors can be caught unaware when transactions are considered or have proceeded without their reasonable knowledge, that they have a direct or indirect interest in.

On these occasions the failure to declare an interest can result in a transaction being voided and so it becomes the board's decision as to if they will sanction the transaction, or if the transaction has already proceeded, void it.

Not only is this is difficult time for the Director in question seeking authorisation following a declaration of interest, but for the board itself which must take into consideration the company needs and the level of risk the conflict represents.

> Outlined below are a few simple items to assist Directors when they are approached with the difficult task of authorising a conflict:

1. When considering the authorisation of a matter, each voting Director is required to base their decision on what they feel would benefit the company's interests most.
 2. The Director seeking authorisation needs to declare specific information in relation to the potential conflict of interest as fully as possible. In particular, information should include the specific nature of the conflict, and a full disclosure of history relating to the conflict.
 3. The board voting on authorisation will have the ability to name conditions on which their authorisation is given and should these be violated, then the transaction is voidable.
 4. Authorisation does not have to contain conditions, but it is often wise that upon authorising a conflict the board ensures that the Director that sought authorisation takes steps to avoid any unnecessarily uncomfortable situations for example meetings regarding the transaction, company or item relating to the conflict.
 5. Boards should also consider if it would be appropriate to regularly review given authorisation.
 6. Boards should be aware that their authorisation applies to the conflict in question but does not cover any other failures of duty on the part of the Director in relation to that conflict. Each Director is expected to continue to act in a manner and make decisions based on the best interests of the company, with or without authorisation from the board regarding a conflict.
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Essentially, providing that Directors disclose any concerns of conflicts of interest in full at the earliest opportunity a company and board can continue to act successfully and in line with the Companies Act as well as their own company formalities and guidelines.

Please note that this is a basic guide, for more information please contact corporatelaw@taylor-rose.co.uk