

# DIRECTOR'S DUTIES



## DIRECTOR CONFLICTS OF INTEREST

The Companies Act 2006 outlines the responsibilities of a Director and in specifically relation to conflicts of interest; it outlines the three general duties a Director must observe.

➤ **To refuse benefits from third parties**

The Director must not accept benefits offered from third parties that may have an interest in the company in question, and to ensure that any offered are declared openly.

➤ **To declare interests**

A Director has a duty to declare any interests they may have with a third party supplier, arrangement or contract being undertaken by the company, or a transaction they have an interest in.

➤ **To avoid conflicts of interest wherever possible**

There is also the duty for a Director to avoid any conflicts of interest wherever possible and should a situation arise where a Director has by some means allowed a conflict of interest to occur in terms of a transaction or contract then unless the shareholders agree they can veto it altogether or, should it have already been processed and then discovered later, the Director has to declare any personal profit received.

Conflicts of interest can be changeable company to company dependant on the individual situation at the time, but generally can be placed into two main categories, conflicts of interest that involve a transaction, and those conflicts of interest that do not.

## DIRECTOR CONFLICTS OF INTEREST INVOLVING A TRANSACTION

Surprisingly, a Director is not under a duty to avoid transactions that they may have an interest in, but they must declare the exact nature of the interest to the board (direct and indirect) whether this is a transaction that the board is proposing entering into or a transaction that has already been entered into.

A failure to disclose an interest can be considered a breach of duty and can result in the transaction being stopped by the board. The safety net of the Director in this regard is that they are not obliged to declare an interest if it is the case that the interest is not likely to give rise to a conflict.

When there is a case of a person connected to the Director with an interest, the Director does not always have to disclose this, but as it could potentially be argued that this would fall under the indirect interest of the Director it is usually safer for the Director to declare any potential connected persons interests also.

When covering the idea of Director benefits, providing these are from a third party and are deemed highly unlikely to bring about any conflicts of interest they can be authorised. Directors should also ensure that their company is made aware of any third party benefits they receive.

In general, it is best practise that Directors make their board aware as soon as possible in full detail as to any potential conflicts of interest and interests they have in the transaction.

It is also important to remember that after a declaration is made from a Director of an interest, the other Directors must also ensure that they fulfil their obligations to the company and that the transaction does not just promote the interests of the Director but the company as a whole.

Voting Directors are able to impose conditions upon the authorisation of the transaction if they wish.

A Director is not under a duty to avoid transactions of which they have an interest in, but part of their duty does demand that they declare any interest they have in a transaction or company arrangement as soon as possible, whether this is a transaction that the company is considering entering into, or already involved in.

There are two scenarios covered by the Companies Act regarding a Director conflict of interest, as outlined above, a transaction already entered into and a transaction being entered into.



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## TRANSACTIONS ALREADY ENTERED INTO

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If a Director finds that a transaction has been entered into, which they were unaware of, but do have an interest in they have a duty to disclose this interest and any profit or benefits to the company. There is the possibility that following a disclosure from a Director of which they have an interest the transaction becomes voidable, by the vote of the other Directors.

A Director has a duty to enquire, and often Directors can reasonably be held accountable for matters which they 'should have had an awareness of.' Understandably this can be confusing for all involved and so for example if a 'non acting Director' found that another company of which they had a minor interest in had entered in to an agreement, it can be argued that they would not have known about the transaction, nor particularly should have known they have not failed in their duty.

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## TRANSACTIONS BEING ENTERED INTO

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To not declare an interest in a transaction that is being entered into is a criminal offence and can be subject to prosecution. A Director has a responsibility to declare any interest or possible conflict of interest, direct or indirect before the transaction has been concluded.

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## OTHER INTERESTS

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Another potential conflict of interest to be taken into account is that of a connected person.

Whilst the Companies Act does not strictly outline that a connected person can be accredited as an interest of a Director in a transaction, there can be the assumption of an indirect interest.

The safest course of action for any Director in this situation would be to declare openly that they are connected with a person relevant to the transaction and therefore could be considered to have an interest.

Directors must also declare any benefits that have been offered by a third party and due to section 176 of the Companies Act, have a duty to decline any benefits; unless it can be reasonably deemed that acceptance of these benefits will not give rise to a conflict of interest.

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*Please note that this is a basic guide, for more information please contact [corporatelaw@taylor-rose.co.uk](mailto:corporatelaw@taylor-rose.co.uk)*