



# Knowledge Bank

## Directors' duties

Corporate Account  
CA006

This Statement provides a guide to the duties of directors.

### The different legal sources of directors' duties

Legal obligations are placed on directors by the common law and statute. A large part (but not all) of the common law duties have been given a statutory footing in the Companies Act 2006 ("CA06").

### Who do they apply to?

Directors' duties are obligations on all directors, including:

1. executive directors;
2. non-executive directors (executive and non-executive directors whose appointments have been registered at Companies House are sometimes called "*de jure directors*");
3. "*de facto directors*" (directors who have not been formally appointed or registered as directors but act and are held out as such); and
4. "*shadow directors*" (those directors who do not act as directors and are not registered as directors but in accordance with whose instructions and direction the board of directors are accustomed to act).

### Seven general duties of directors

The seven general duties of directors set out in sections 171 to 177 CA06 are:

1. to act within the powers conferred by the company's constitution;
2. to promote the success of the company;
3. to exercise independent judgment;
4. to exercise reasonable care and skill;
5. to avoid conflicts of interest;
6. not to accept benefits from third parties; and
7. to declare interests in proposed transactions or arrangements.

These duties apply at all times and not just when the company faces financial difficulty. If a director is the director of more than one company, he should consider his actions in respect of these duties separately for each company.

## Directors' duties owed to the "company"

Section 172 CA06 provides a director must act in a way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members (eg shareholders) as a whole, and in doing so have regard to the following factors:

1. the likely consequences of any decision in the long term;
2. the interests of the company's employees;
3. the need to foster the company's business relationships with suppliers;
4. the impact of the company's operations on the community and the environment;
5. the desirability of the company maintaining a reputation for high standards of business conduct; and
6. the need to act fairly between members of the company.

Case law also provides that when a company is insolvent, or is in a "dangerous" financial position, the director must have regard to the interests of the company's creditors (as well as the shareholders) because of their prospective entitlement to the company's assets should the company go into an insolvency process. The priority given to the interests of members over creditors and vice versa is one of degree given the solvency of the company, but in many instances the best interests of the two groups will coincide.

These principles have been codified in section 172(3) CA06 which provides that the duty of directors to promote the success of the company for the benefit of its members is subject to any legal requirement, in certain circumstances, to consider or act in the interests of the creditors of the company.

### Further information

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