

## **Liabilities of a Director – English Law**

There are many different situations in which a director can be personally liable under English law. This can be personal liability due to actions relating to health and safety, consumer protection, environmental, employment and bribery/anti-corruption. Personal liability can also arise in insolvency situations when the directors knowingly or negligently allow the company to carry on trading. This is known as fraudulent or wrongful trading.

Directors also owe statutory duties under the Companies Act 2006 to the company, as well as duties that are derived from common law or in equity.

The statutory duties owed apply to directors and shadow directors and are found in sections 171-177 (inclusive) of the Companies Act 2006. These duties are as follows:

1. Duty to act within powers (s.171)  
A director must act within their powers, using them in accordance with the company's constitution and "for the purposes for which they are conferred". A director should not use their powers for personal gain or for any other improper purpose.
2. Duty to promote the success of the company (s.172)  
A director must act in good faith and in a way that promotes the success of the company for the benefit of its members as a whole.
3. Duty to exercise independent judgment (s.173)  
Directors can rely on advice from others but they must make their own judgments, exercise powers independently, and not fetter their discretion.
4. Duty to exercise reasonable care, skill and diligence (s.174)  
The level to which a director exercises their care, skill and diligence is assessed objectively and subjectively. This level would be that of a reasonably diligent person with the general knowledge, skill and experience that may reasonably be expected of someone in the director's role and with the general knowledge, skill and experience of that director.
5. Duty to avoid conflicts of interest (s.175)  
This duty deals with conflicts of interest which directors might experience, whether it is a direct or indirect interest. This can be for example, a director being a major shareholder of the company or a director being in a situation where he/she can make a profit as a result of being a director of the company.
6. Duty not to accept benefits from third parties (s.176)  
A director must not accept a benefit from a third party which is conferred by reason of their being a director, or by reason of their doing (or not doing) anything as a director. If the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest this duty is not breached.
7. Duty to declare interest in proposed transaction (s.177)  
A director must declare the nature and extent of their interest to the other directors if they are interested in a proposed transaction with the company. This includes direct and indirect interests.

A director can be personally liable to indemnify the company for any loss and account to the company for any gain realised if a director has breached their duties or exceeded the scope of their authority. This is irrespective of whether the company itself could have realised that gain. As these duties are owed to the company by the directors, the company can decide to take legal action against that director in relation to any breaches. There are also many other remedies that could be ordered against the director in breach, including restoration of the company's property, rescission of a contract and injunctions and declarations.

If a director does breach any of the duties under the Companies Act 2006, under section 239 of the Companies Act 2006, the shareholders can ratify the breach by passing an ordinary resolution. This means that the company could not take any further action in relation to that particular breach.

If you would like any further information regarding directors' duties, any potential breaches or ratification, please do contact the Corporate Commercial Department at Downs Solicitors LLP, who would be delighted to assist.



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