

New duties for Company Directors from 1st October



October 2008

1st October heralds the inclusion of three new duties relating to directors' conflicts of interests which need to be borne in mind by any Company Directors:

1. duty to avoid conflict of interests;
2. duty to declare interests in transactions and arrangements with the company; and
3. duty not to accept benefits from third parties.

What is a Conflict of Interest?

In it's simplest terms, a conflict of interest is where the interests, motivations or circumstances of a Director conflict with those of the company. This is particularly relevant where a profit might be made by a Director as a result of his association with the Company and the opportunities, contacts or information that this might bring him to use in another role. The rules governing conflicts of interests originate in Scottish case law from the 1900's and have developed to incorporate the complexities of modern business practice including, amongst many others, self-dealing, insider trading and competition law.

Conflicts of interest are not, however, forbidden within Companies, merely strictly regulated and controlled. Previously it has been possible within a private company for a Director to enter into a transaction which includes a conflict of interest provided he declares the potential conflict and has the informed consent of the shareholders of the company or, in certain limited circumstances, of the board of Directors.

What do these new duties mean in real terms?

Most company directors of small or family firms are unaware of the labyrinth of rules and regulations surrounding their position and only become aware of their potential liability when action is taken against them, so it is prudent to remain on top of the law relating to companies if you hold a directorial position.

The most significant of the new duties is the duty to avoid conflicts of interest, as this has a very wide definition and will require not only caution but also advance action by company directors who could find themselves caught by this new category.

Particularly at risk are directors who hold multiple directorships, or those who act as a significant shareholder or competitor, adviser, supplier, advisor, landlord or even customer of the company.

Potential conflicts need to be authorised at board level under the new rules – public companies will first need to amend their articles to enable director authorisation while private companies can pass a shareholders resolution to the same effect. Bear in mind, however, that only those directors who have no connection with the conflict in question can actually vote and count in the quorum.

There are also new rules allowing the company's articles to include provisions to deal with potential conflicts of interest.

For further information about Directors duties or Company Law, please contact us at law@pwjsolicitors.co.uk or by telephone on **020 8441 1556** or **020 8364 9955**.

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