Directors' Duties – The Story

1. The extent of directors' duties

A. Directors' duties under case law

In re CITY EQUITABLE FIRE INSURANCE COMPANY, LIMITED.
[1925] Ch. 407

Leading light of a company committed widespread fraud – the issue arose whether or not the directors and auditors were liable to the company for the acts of the leading light – inter alia signing blank cheques & "wilful default" on the part of the auditors.

Romer J

[p.425] Nearly the whole of these enormous losses were brought about through Bevan's instrumentality, and a large part of them by his deliberate fraud. For that fraud he has been tried, and convicted, and is now suffering the just penalty. But the question not unnaturally arises as to whether, during the period covered by Bevan's nefarious activities, the other directors and the auditors of the company were properly discharging the duties that they owed to the company's shareholders.

[p.426] It has sometimes been said that directors are trustees. If this means no more than that directors in the performance of their duties stand in a fiduciary relationship to the company, the statement is true enough. But if the statement is meant to be an indication by way of analogy of what those duties are, it appears to me to be wholly misleading. I can see but little resemblance between the duties of a director and the duties of a trustee of a will or of a marriage settlement. It is indeed impossible to describe the duty of directors in general terms, whether by way of analogy or otherwise. The position of a director of a company carrying on a small retail business is very different from that of a director of a railway company. The duties of a bank director may differ widely from those of an insurance director, and the duties of a director of one insurance company may differ from those of a director of another. In one company, for instance, matters may normally be attended to by the manager or other members of the staff that in another company are attended to by the directors themselves. The larger the business carried on by the company the more numerous, and the more important, the matters that must of necessity be left to the managers, the accountants and the rest of the staff. The manner in which the work of the company is to be distributed between the board of directors and the staff is in truth a business matter to be decided on business lines. To use the words of Lord Macnaghten in *Dovey v. Cory* ([1901] AC 477, 488): "I do not think it desirable for any tribunal to do that which Parliament has abstained from doing - that is, to formulate precise rules for the guidance or embarrassment of business men in the conduct of business affairs."

[p.427] In discharging the duties of his position thus ascertained a director must, of course, act honestly; but he must also exercise some degree of both skill and diligence. To the question of what is the particular degree of skill and diligence required of him, the

authorities do not, I think, give any very clear answer. It has been laid down that so long as a director acts honestly he cannot be made responsible in damages unless guilty of gross or culpable negligence in a business sense. But as pointed out by Neville J. in *In re Brazilian Rubber Plantations and Estates, Ld*. ([1911] 1 Ch 425, 437), one cannot say whether a man has been guilty of negligence, gross or otherwise, unless one can determine what is the extent of the duty which he is alleged to have neglected.

[p.428] In saying this Neville J. was only following what was laid down in *Overend & Gurney Co. v. Gibb* (L.R. 5 H. L. 480, 486.) as being the proper test to apply, namely: "Whether or not the directors exceeded the powers entrusted to them, or whether if they did not so exceed their powers they were cognisant of circumstances of such a character, so plain, so manifest, and so simple of appreciation, that no men with any ordinary degree of prudence, acting on their own behalf, would have entered into such a transaction as they entered into?"

[p.428] There are, in addition, one or two other general propositions that seem to be warranted by the reported cases: (**1.**) A director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience. A director of a life insurance company, for instance, does not guarantee that he has the skill of an actuary or of a physician. In the words of Lindley M.R.: "If directors act within their powers, if they act with such care as is reasonably to be expected from them, having regard to their knowledge and experience, and if they act honestly for the benefit of the company they represent, they discharge both their equitable as well as their legal duty to the company": see *Lagunas Nitrate Co. v. Lagunas Syndicate* ([1899] 2 Ch 392, 435). It is perhaps only another way of stating the same proposition to say that directors are not liable for mere errors of judgment. (**2.**) A director is not bound to give continuous attention to the affairs of his company. His duties are of an intermittent nature to be performed at periodical board meetings, and at meetings of any committee of the board upon which he happens to be placed. He is not, however, bound to attend all such meetings, though he ought to attend whenever, in the circumstances, he is reasonably able to do so. (**3.**) In respect of all duties that, having regard to the exigencies of business, and the articles of association, may properly be left to some other official, a director is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly. … Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them.

[p.457] To return, however, to the particular cases of Lord March and Mr. Milligan, I cannot find them guilty of any breach of duty merely because the amounts for which they signed cheques in Mansell's favour did not make them suspect that he was being overpaid.

[p.501] **POLLOCK M.R.** This case is important in the sense that it has arisen in the course of the liquidation of a notable reinsurance company with many and considerable liabilities. The company was at one time prosperous, and in a short time it was brought to a tragic end by the fraud of its chairman, who was later convicted and sentenced to a term of imprisonment. Its downfall has involved many persons in its ruin and consequent suffering to them.

PUNT v. SYMONS & CO., LIMITED.
[1903] 2 Ch. 506

A power in the articles was used by the directors to obstruct a takeover.

BYRNE J.

[p.515] “On the evidence I am quite clear that these shares were not issued bona fide for the general advantage of the company, but that they were issued with the immediate object of controlling the holders of the greater number of shares in the company, and of obtaining the necessary statutory majority for passing a special resolution while, at the same time, not conferring upon the minority the power to demand a poll. … A power of the kind exercised by the directors in this case, is one which must be exercised for the benefit of the company: primarily it is given them for the purpose of enabling them to raise capital when required for the purposes of the company. … but when I find a limited issue of shares to persons who are obviously meant and intended to secure the necessary statutory majority in a particular interest, I do not think that is a fair and bona fide exercise of the power.”

HOGG v. CRAMPHORN LTD. AND OTHERS
[1967] Ch. 254

Colonel Cramphorn wanted to stop (the efficient) Baxter from taking the company over. The directors tended to follow Cramphorn’s lead. The use of the power was held to be ultra vires, even though in good faith, but ratifiable by the shareholders. (The shareholders did indeed ratify.)

BUCKLEY J.

[Headnote] B offered to buy the whole of the issued share capital … The directors, acting in good faith and believing that the establishment of a trust and avoidance of the acquisition of control by B. would benefit the company, devised a scheme, the primary purpose of which was to ensure control of the company by the directors. … *Held*: the power to issue shares was a fiduciary power, and if exercised for an improper motive the issue was liable to be set aside, it being immaterial that the issue was made in the bona fide belief that it was in the interests of the company.

[p.257] Mr. Baxter made an oral proposition to Colonel Cramphorn [… oo-er! …] Colonel Cramphorn formed the view that the offer would unsettle the company's staff. [… oo-double-er! …]

[]I now turn to what has been the main matter of debate in this case, which is whether the allotment of the 5,707 shares was an improper use by the directors of their discretionary and fiduciary power under article 10 … It is common ground that the scheme of which this allotment formed part was formulated to meet the threat, as the directors regarded it, of Mr. Baxter's offer.

Followed *Punt v. Symons & Co. Ltd* ([1903] 2 Ch. 506, 515) Byrne J. said:

> "A power of the kind exercised by the directors in this case, is one which must be exercised for the benefit of the company: primarily it is given them for the purpose of enabling them to raise capital when required for the purposes of the company. There may be occasions when the directors may fairly and properly issue shares in the case of a company constituted like the present for other reasons. For instance, it would not be at all an unreasonable thing to create a sufficient number of shareholders to enable statutory powers to be exercised; but when I find a limited issue of shares to persons who are obviously meant and intended to secure the necessary statutory majority in a particular interest, I do not think that is a fair and bona fide exercise of the power."

[p.268] Unless a majority in a company is acting oppressively towards the minority, this court should not and will not itself interfere with the exercise by the majority of its constitutional rights or embark upon an inquiry into the respective merits of the views held or policies favoured by the majority and the minority. … A majority of shareholders in general meeting is entitled to pursue what course it chooses within the company's powers, however wrong-headed it may appear to others, provided the majority do not unfairly oppress other members of the company.

[p.270] The loan was not made with the single-minded purpose, or even with the primary purpose, of benefiting the company otherwise than by securing that control for the directors or facilitating their securing that control.

[Shareholders in general meeting convened pursuant to this judgment on November 21, 1963, ratified and approved.]

MULTINATIONAL GAS AND PETROCHEMICAL CO. v. MULTINATIONAL GAS AND PETROCHEMICAL SERVICES LTD. AND OTHERS

[1983] Ch. 258

Lawton, May and Dillon L.JJ.

A Liberian subsidiary formed as a joint venture to acquire oil tankers. The directors provided negligent information in relation to the joint venture. Issue: whether the directors liable for the ensuing loss.

May LJ

[p.270] In this action it is contended that these respective directors were all of them negligent in their respective capacities, and that for that negligence the joint venturers are vicariously liable. It is said that the directors of Services were negligent in carrying out their duties with the result that budgets, forecasts and information prepared for the directors of the plaintiff, to enable the board of that company to make its decisions in and

about carrying on its business, were inadequate and insufficient, at best unreliable and at worst wholly incorrect. It is contended that the directors of the plaintiff were in their turn also negligent in that actually knowing or in circumstances in which they ought to have known of the deficiencies in the material with which they were being provided by Services, they nevertheless failed to appreciate those deficiencies, as they ought to have done and not only failed to require Services to rectify the material, but indeed acted upon it when making the five decisions to build or acquire the tankers specified in paragraph (A) of the particulars of damage to paragraph 97 of the statement of claim, which they should not have done had they been properly and efficiently advised by Services and had exercised proper care on their own part. It is finally alleged that as a result of making those five decisions the plaintiff suffered damage to the extent of the net liabilities which their participation in such contracts involved, namely, about £75,000,000.

[p.272] “Now in my opinion there is no doubt that a director of a limited company owes such a degree of care to that company as a reasonable man might be expected to take in the circumstances on his own behalf.”

Dillon LJ: It is not suggested that Services was a sham or that the corporate veil can be torn aside so as to treat the activities of Services as activities of the plaintiff.

RE D'JAN OF LONDON LTD
[1994] 1 BCLC 561

Chancery Division: Hoffmann LJ (sitting as an additional judge of the chancery division)

Director negligently signed an insurance form such that he gave incorrect information so that the company was not properly insured, with the result that when valuable stock was lost in fire the company lost £174,000.

[p.562] The liquidator alleges that the respondent Mr D'Jan was negligent in completing and signing a proposal form for fire insurance with Guardian Royal Exchange Assurance plc. As a result, the insurers repudiated liability for a fire at the company's premises in Cornwall which had destroyed stock said to be worth some £174,000. … Mr D'Jan says he realises - perhaps more clearly now than he did at the time - the importance of giving correct answers on insurance proposals. But he says that he did not fill in the form himself or read it before he signed. It was filled in by his insurance broker … He did not strike me as a man who would fill in his own forms. … Nevertheless I think that in failing even to read the form, Mr D'Jan was negligent. …

[p.563] I do not say that a director must always read the whole of every document which he signs. If he signs an agreement running to 60 pages of turgid legal prose on the assurance of his solicitor that it accurately reflects the board's instructions, he may well be excused from reading it all himself. But this was an extremely simple document asking a few questions which Mr D'Jan was the best person to answer. By signing the form, he accepted that he was the person who should take responsibility for its contents. In my view, the duty of care owed by a director at common law is accurately stated in s 214(4) of the Insolvency Act 1986. It is the conduct of -

> 'a reasonably diligent person having both - (*a*) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and (*b*) the general knowledge, skill and experience that that director has.'

Both on the objective test and, having seen Mr D'Jan, on the subjective test, I think that he did not show reasonable diligence when he signed the form. He was therefore in breach of his duty to the company.

[p.564] … It may be reasonable to take a risk in relation to your own money which would be unreasonable in relation to someone else's. … I therefore declare that Mr D'Jan is liable to compensate the company for the loss caused by his breath of duty in an amount not exceeding any unpaid dividends to which he would otherwise be entitled as an unsecured creditor.

In re SMITH AND FAWCETT, LIMITED.
[1942] Ch. 304

The directors had an express power in the articles to refuse to register a transfer of shares which they purported to exercise.

[p.306] **LORD GREENE M.R.** The principles to be applied in cases where the articles of a company confer a discretion on directors with regard to the acceptance of transfers of shares are, for the present purposes, free from doubt. They must exercise their discretion bona fide in what they consider - not what a court may consider - is in the interests of the company, and not for any collateral purpose. They must have regard to those considerations, and those considerations only, which the articles on their true construction permit them to take into consideration, and in construing the relevant provisions in the articles it is to be borne in mind that one of the normal rights of a shareholder is the right to deal freely with his property and to transfer it to whomsoever he pleases. … Another consideration which must be borne in mind is that this type of article is one which is for the most part confined to private companies. Private companies are in law separate entities just as much as are public companies, but from the business and personal point of view they are much more analogous to partnerships than to public corporations. Accordingly, it is to be expected that in the articles of such a company the control of the directors over the membership may be very strict indeed. There are, or may be, very good business reasons why those who bring such companies into existence should give them a constitution which confers on the directors powers of the widest description.

DORCHESTER FINANCE CO LTD V STEBBING
[1989] BCLC 498

Accountants who were directors had been signing blank cheques for a non-executive director who was rarely in the office. Those blank cheques had been cashed fraudulently. (Money-lending and hairdressing businesses.)

FOSTER J

[p.501] I am therefore left with the question: 'Were the first three defendants negligent in their duties as directors of Dorchester?' … For the plaintiffs three main submissions were made in regard to the duties of the directors. a) A director is required to exhibit in performance of his duties such a degree of skill as may reasonably be expected from a person with his knowledge and experience. b) A director is required to take in the performance of his duties such care as an ordinary man might be expected to take on his own behalf. c) A director must exercise any power vested in him as such honesty, in good faith and in the interests of the company and reliance was placed on *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407, [1924] All ER Rep 485, *Re Sharpe* [1892] 1 Ch 154, and *Re Smith & Fawcett Ltd* [1942] 1 All ER 542, [1942] Ch 304. … I accept the plaintiffs' three submissions as accurately stating the law …

[p.502] Although he has no qualifications as an accountant he said that he trained as one and worked for some 14 years for the Ministry of Health on the audit of the books of regional hospital boards, and as a deputy finance officer of a regional hospital board controlling 12 hospitals … [blah blah blah]

[p.502] He admitted that he signed blank cheques as a director of Dorchester but could not remember how many. … [p.503] But he admitted that there had never been a board meeting of the directors of Dorchester, that he did not know whether Dorchester kept proper books of account or not, and he was not involved in the purpose of the various loans made by Dorchester. In his own words, 'I let Mr Stebbing have absolute control. He could dispose of money as he liked.'

[p.505] ***Conclusion***

For a chartered accountant and an experienced accountant to put forward the proposition that a non-executive director has no duties to perform I find quite alarming. It would be an argument which, if put forward by a director with no accounting experience, would involve total disregard of many sections of the Companies Act 1948 (see in particular ss 176 to 204). The signing of blank cheques by Hamilton and Parsons was in my judgment negligent, as it allowed Stebbing to do as he pleased. Apart from that they not only failed to exhibit the necessary skill and care in the performance of their duties as directors, but also failed to perform any duty at all as directors of Dorchester. In the Companies Act 1948 the duties of a director whether executive or not are the same.

In the absence of any oral evidence by Stebbing, the documents must speak for themselves. They show clearly that Stebbing as a director of Dorchester failed to exercise any skill or care in the performance of his duty as a director and that he knowingly and recklessly misapplied the assets of Dorchester to the extent of nearly

£400,000. His negligence can only be described as gross negligence and he also is liable for damages.

FOSTER BRYANT SURVEYING V BRYANT

([2007] EWCA Civ 200, [2007] IRLR 425, [2007] 2 BCLC 239)

Rix LJ cited with approval the following principles:

"1. A director, while acting as such, has a fiduciary relationship with his company. That is he has an obligation to deal towards it with loyalty, good faith and avoidance of the conflict of duty and self-interest.

2. A requirement to avoid a conflict of duty and self-interest means that a director is precluded from obtaining for' himself, either secretly or without the informed approval of the company, any property or business advantage either belonging to the company or for which it has been negotiating, especially where the director or officer is a participant in the negotiations,

3. A director's power to resign from office is not a fiduciary power, He is entitled to resign even if his resignation might have a disastrous effect on the business or reputation of the company.

4. A fiduciary relationship does not continue after the determination of the relationship which gives rise to it. After the relationship is determined the director is in general not under the continuing obligations which are the feature of the fiduciary relationship.

5. Acts done by the directors while the contract of employment subsists but which are preparatory to competition after it terminates are not necessarily in themselves a breach of the implied term as to loyalty and fidelity.

6. Directors, no less than employees, acquire a general fund of skill, knowledge and expertise in the course of their work, which is plainly in the public interest that they should be free to exploit it in a new position. After ceasing the relationship by resignation or otherwise a director is in general (and subject of course to any terms of the contract of employment) not prohibited from using his general fund of skill and knowledge, the 'stock in trade' of the knowledge he has acquired while a director, even including such things as business contacts and personal connections made as a result of his directorship.

7. A director is however precluded from acting in breach of the requirement at 2 above, even after his resignation where the resignation may fairly be said to have been prompted or influenced by a wish to acquire for himself any maturing business opportunities sought by the company and where it was his position with the company rather than a fresh initiative that led him to the opportunity which he later acquired

8. In considering whether an act of a director breaches the preceding principle the factors to take into account will include the factor of position or office held, the nature of the corporate opportunity, its ripeness, its specificness and the director's relation to it, the amount of knowledge possessed, the circumstances in which it was obtained and whether it was special or indeed even private, the factor of time in the continuation of the fiduciary duty where the alleged breach occurs after termination of the relationship with

the company and the circumstances under which the breach was terminated, that is whether by retirement or resignation or discharge.

9. The underlying basis of the liability of a director who exploits after his resignation a maturing business opportunity of the company is that the opportunity is to be treated as if it were the property of the company in relation to which the director had fiduciary duties. By seeking the exploit the opportunity after resignation he is appropriating to himself that property. He is just as accountable as a trustee who retires without properly accounting for trust property.

10. It follows that a director will not be in breach of the principle set out as point 7 above where either the company's hope of obtaining the contract was not a 'maturing business opportunity' and it was not pursuing further business orders nor where the director's resignation was not itself prompted or influenced by a wish to acquire the business for himself.

11. As regards breach of confidence, although while the contract of employment subsists a director or other employee may not use confidential information to the detriment of his employer, after it ceases the director/employee may compete and may use know-how acquired in the course of his employment (as distinct from trade secrets - although the distinction is sometimes difficult to apply in practice)."

B. The comprehensive statutory code

1. The general duties

170 Scope and nature of general duties

(1) The general duties specified in sections 171 to 177 are owed by a director of a company to the company.

(2) A person who ceases to be a director continues to be subject–

(a) to the duty in section 175 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director, and

(b) to the duty in section 176 (duty not to accept benefits from third parties) as regards things done or omitted by him before he ceased to be a director.

To that extent those duties apply to a former director as to a director, subject to any necessary adaptations.

(3) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.

(4) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties.

(5) The general duties apply to shadow directors where, and to the extent that, the corresponding common law rules or equitable principles so apply.

2. The Duty to Act Within Powers

The general duties

171 Duty to act within powers

A director of a company must–

(a) act in accordance with the company's constitution, and

(b) only exercise powers for the purposes for which they are conferred.

Liability to compensate company for breach of this duty: *Hely Hutchinson v Brayhead Ltd* [1968] 1 QB 549, *Freeman and Lockyer v Buckhurst Park Properties* [1964] 2 QB 480, CA.

171(b) makes it clear that this doctrine exists, whereas it was not clear under the case law. Although as stated it does seem to be self-evident that one must only exercise the powers that one has for the purposes for which those powers were conferred.

Re Smith and Fawcett: director must not use power for collateral purpose.

3. The Duty to Promote the Success of the Company

172 Duty to promote the success of the company

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to–

(a) the likely consequences of any decision in the long term,

(b) the interests of the company's employees,

(c) the need to foster the company's business relationships with suppliers, customers and others,

(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

Enlightened shareholder value

The Act adopts the "enlightened shareholder value" approach from the Company Law Review:

> "… what is in view is not the individual interests of members, but their interests as members of an association with the purposes and the mutual arrangements embodied in the constitution; the objective is to be achieved by the directors successfully managing the complex of relationships and resources which comprise the company's undertaking".

So, we have to take into account (non-exclusive list):

- the likely long-term consequences,
- fairness between shareholders
- employees,
- suppliers
- customers
- (creditors)

- the community
- the environment
- high standards of business conduct

NB: s.170 requires that the duty is owed to the director, and therefore the people in this list do not acquire rights personally against the directors.

I.e., the expected tangible effects:

- general economic effect
- long-term "success" not short-term profit (cf. earnings-per-share; short-selling)
- corporate social responsibility
- business integrity
- not simply profits for shareholders

Q: who decides what success means?
A: the framers of the articles of association in general terms, and then the directors from case to case.

The subjective test on directors

Smith and Fawcett: directors to make decisions in a business fashion. Accepted in the books that this is a subjective test.

Q: Must a director give conscious thought to this duty, or can she simply barrel on and then be measured against this standard ex post facto?
A: How would this default be proved unless the directors expressly recorded that they did not consider it at all. A well-run company will record in minutes that there is compliance with this test.

Other issues

Q: will this create a paper trail or tick-box culture?
A: yes; but the list is non-exclusive.

Q: will this cause increased litigation?
A: actionable only by the company.

Q: is this a defence, or a duty?
A: it's a duty, but could be used as a defence if boxes ticked.

Q: is there a duty to disclose misconduct?
A: semble, *Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244, [44]

4. The Duty to Exercise Independent Judgment

173 Duty to exercise independent judgment

(1) A director of a company must exercise independent judgment.

(2) This duty is not infringed by his acting–

(a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or

(b) in a way authorised by the company's constitution.

Nominee directors

I.e. nominee directors cannot claim simply to be robots acting at the instruction of others.

Cannot fetter discretion

5. The Duty to Exercise Reasonable Care, Skill and Diligence

174 Duty to exercise reasonable care, skill and diligence

(1) A director of a company must exercise reasonable care, skill and diligence.

(2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with–

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and

(b) the general knowledge, skill and experience that the director has.

Subjective or objective?

- It is said in the books that this marks an end to the subjective test in *Re City Fire*.
- I.e. movement towards *D'Jan* test.
- But 174(2)(b) does retain a subjective element.

6. The Duty to Avoid Conflicts of Interest

175 Duty to avoid conflicts of interest

(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

(2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.

(4) This duty is not infringed–

(a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(b) if the matter has been authorised by the directors.

(5) Authorisation may be given by the directors–

(a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or

(b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.

(6) The authorisation is effective only if–

(a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and

(b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

7. The Duty Not to Accept Benefits

176 Duty not to accept benefits from third parties

(1) A director of a company must not accept a benefit from a third party conferred by reason of–

(a) his being a director, or

(b) his doing (or not doing) anything as director.

(2) A "third party" means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.

(3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.

(4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

8. The Duty to Declare Interests in Transactions

177 Duty to declare interest in proposed transaction or arrangement

(1) If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.

(2) The declaration may (but need not) be made–

(a) at a meeting of the directors, or

(b) by notice to the directors in accordance with–

(i) section 184 (notice in writing), or

(ii) section 185 (general notice).

(3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

(4) Any declaration required by this section must be made before the company enters into the transaction or arrangement.

(5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.

(6) A director need not declare an interest–

(a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

(b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or

I if, or to the extent that, it concerns terms of his service contract that have been or are to be considered–

(i) by a meeting of the directors, or

(ii) by a committee of the directors appointed for the purpose under the company's constitution.

9. The effect of a breach of duty

Supplementary provisions

178 Civil consequences of breach of general duties

(1) The consequences of breach (or threatened breach) of sections 171 to 177 are the same as would apply if the corresponding common law rule or equitable principle applied.

(2) The duties in those sections (with the exception of section 174 (duty to exercise reasonable care, skill and diligence)) are, accordingly, enforceable in the same way as any other fiduciary duty owed to a company by its directors.

179 Cases within more than one of the general duties

Except as otherwise provided, more than one of the general duties may apply in any given case.