

The duties of directors under the Companies Act 2006

The Companies Act 2006 introduced a statutory code of directors' general duties for the first time.¹ The underlying purpose of the legislation was to improve the understanding of directors' legal duties among directors generally. The directors' duties set out in the Act are "based on certain common law rules and equitable principles"² and moreover those statutory duties "shall be interpreted and applied in the same way as common law rules or equitable principles".³ The statutory duties are then to be interpreted in the future in accordance with the development of those case law principles.⁴ Therefore, the statutory code should be thought of as being a statutory expression of the developing case law principles and will develop as the case law develops in the future. These duties are owed to the company, not to its shareholders.⁵ Those duties on each director in outline are: a duty to act within the terms of his powers under the company's constitution;⁶ a duty to promote the success of the company as the director sees it in good faith;⁷ a duty to exercise independent judgment;⁸ a duty to exercise reasonable care, skill and diligence;⁹ a duty to avoid conflicts of interest;¹⁰ a duty not to accept benefits, such as bribes and secret commissions;¹¹ and a duty to declare interests in transactions.¹² These last three remedies are predicated on the equitable doctrines relating to prevention of conflicts of interest (as in *Boardman v Phipps*) and bribes (as in *Attorney-General for Hong Kong v Reid*) as discussed already in this chapter. The 2006 Act expressly incorporates these long-standing equitable doctrines to provide remedies to breach of these director's duties.¹³

Section 175 of the Companies Act 2006 deals specifically with the duties of directors in relation to conflicts of interest. The purpose of this provision is to codify the existing case law principles discussed above in this chapter, and to develop in parallel to those same principles. Section 175(1) provides that "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".¹⁴ Section 175(4) provides that there is no breach of this principle if either the profit is authorised or if "if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest". In relation specifically to the defence of authorisation for a director, authorisation may be given by

¹ Companies Act 2006, s.170 *et seq.*

² Companies Act 2006, s.170(3).

³ Companies Act 2006, s.170(4).

⁴ Companies Act 2006, s.170(4).

⁵ Companies Act 2006, s.170(1).

⁶ Companies Act 2006, s.171.

⁷ Companies Act 2006, s.172.

⁸ Companies Act 2006, s.173.

⁹ Companies Act 2006, s.174.

¹⁰ Companies Act 2006, s.175.

¹¹ Companies Act 2006, s.176.

¹² Companies Act 2006, s.177.

¹³ Companies Act 2006, s.178.

¹⁴ Companies Act 2006, s.177 provides also that: "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".

the directors under statute now:¹⁵ therefore, directors may explicitly now rely on authorisation being given by the board of directors, provided that the meeting which does so is quorate and that the votes of any directors with such a conflict of interest are discounted.¹⁶ Furthermore, s.176(1) provides (in relation to bribes set out in *Reid*) that “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”. Section 176(4) provides, however, that “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”. In effect, both of these provisions grant defences to directors for actions which otherwise attracted almost strict liability in equity.

¹⁵ Companies Act 2006, s.175(5).

¹⁶ Companies Act 2006, s.175(6).