

Directors' Duties in the BVI: Key Principles

Are you involved in managing or advising a British Virgin Islands ("BVI") company? Understanding the duties owed by directors is essential to ensuring good corporate governance and minimising personal liability.

The BVI Business Companies Act (the "Act") codifies the principal duties that directors owe to the company, drawing upon common law principles while providing statutory clarity.

- (a) **Duty to Act Honestly and in Good Faith:** Directors must act honestly and in good faith and in what they consider to be in the best interests of the company. This fundamental duty requires directors to exercise their powers for proper purposes and to avoid acting with improper motives or for collateral reasons. When determining what is in the best interests of the company, directors should have regard to the interests of the company's members as a whole.
- (b) **Duty of Care, Diligence and Skill:** A director must exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances, taking into account (i) the nature of the company, (ii) the nature of the decision being made, and (iii) the position of the director and the nature of the responsibilities undertaken by them. This standard is both objective and subjective: directors with particular skills or experience may be held to a higher standard commensurate with their expertise.
- (c) **Duty to Avoid Conflicts of Interest:** Directors are required to exercise their powers for a proper purpose and must not place themselves in a position where their duty to the company conflicts with their personal interests or duties owed to third parties. Where a conflict of interest arises, the director should disclose the nature and extent of the conflict to the board and, where appropriate, abstain from voting on the relevant matter.
- (d) **Duty Not to Make Improper Use of Information or Position:** Directors must not improperly use their position as a director, or any information obtained by virtue of their position, to gain an advantage for themselves or others or to cause detriment to the company. This duty, deriving from common law principles, continues even after a director ceases to hold office in relation to information obtained during their tenure.
- (e) **Ratification by Members:** Under principles of common law, any conduct by a director that would otherwise amount to a breach of duty may, in certain circumstances, be ratified by the members of the company by way of resolution. However, this does not apply to conduct that involves fraud, dishonesty, or a breach that cannot lawfully be ratified.

- (f) **Reliance on Information and Professional Advice:** Directors are entitled, when discharging their duties, to rely in good faith upon the reports, statements and advice of professional advisers, employees, or board committees, provided they have reasonable grounds for such reliance and have acted in good faith. This protection helps directors to manage practical governance challenges in complex corporate structures.
- (g) **De Facto and Shadow Directors:** The duties set out in the Act apply not only to formally appointed directors but also to de facto directors (those who act as directors without formal appointment) and shadow directors (those in accordance with whose directions the directors are accustomed to act). Persons who may fall into these categories should be mindful that the same standards and potential liabilities may apply to them.
- (h) **Check the Memorandum and Articles of Association:** A company's memorandum and articles of association will normally place a number of duties on directors or, in certain circumstances, circumvent or tailor the duties described above. It is always recommended that a company's memorandum and articles of association are checked when directors are conducting business of the company.

By adhering to these fundamental duties, directors can demonstrate good governance and protect both the company and them from potential liability.

For more detailed guidance on directors' duties and corporate governance in the BVI, please contact our team. We can help navigate these obligations to ensure compliance with all legal requirements.

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