

Guid Loar

ors' Duties, Conflicts and

The duties that directors have to aspects of company administratione) must be aware of. This Gu Act 2006 (most particularly configure surrounding directors, including directors, shareholder litigation

A

pany are one of the most important of the company secretary (if there is lese duties in light of the Companies s other important matters directors' remuneration, loans to and insurance.

Directors' Duties

The board of directors has cobusiness. They make the strate

Prior to 1st October 2008, the including the common law, the

Following the introduction of the codified in a statutory statemen 2006 Act. However it would be codify the more fundamental as them further.

These duties apply to executive duties are owed to the companial director for breach of duty (all on the company's behalf, see b

The general duties under the C

Act within powers. A do to exercise powers only

The company's constitution agreements of a constitution

 Promote the success company. In other words be most likely to promo as a whole (section 172)

> (This section 172 duty is under the Companies provisions that directors decisions. There is a r likely consequences of employees; the need to customers and others; t the environment; the d

or the management of a company's sions of a company.

were derived from several sources, other statutes.

directors' common law duties were ies set out in sections 171-177 of the isions of the Act in this area not only law on directors' duties but develop

rectors (and shadow directors). The will be able to bring an action against sholders can bring a derivative action

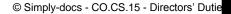
s follows:

with the company's constitution and they were conferred (section 171).

les of association, resolutions and holder agreements).

luty to promote the success of the rector considers, in good faith, would mpany for the benefit of its members

the performance of directors' duties the enlightened shareholder value gard to" in the course of making their ors need to consider, including: the term; the interests of the company's usiness relationships with suppliers, y's operations on the community and ny maintaining a reputation for high



standards of business c company.)

• Exercise independent 173).

This would not preven constitution or an agreei

 Exercise reasonable c skill and diligence (section

The expected standard A director's actual und reasonably be expected

Avoid conflicts of intel

Directors must avoid si conflicts, or may conflic to the exploitation of any not the company could t

- Not accept benefits from position of director or accept do so by the company (section 176).
- Declare interests in pr company. A duty to dis the company (section 17

Any director, directly or company must declare t

The statement of general duact and for how they account

Duties owed to the Company

These general duties are owe described above, it is the comp of duty. A breach of duty mean director concerned and allows to an interest in an existing transa criminal fine.

Shareholder Litigation and De

However notwithstanding that of Act 2006 allows shareholders (known as a "derivative claim") actual or proposed act or omission trust by a director of the company of the c

act fairly as between members of the

ercise independent judgment (section

in accordance with the company's ad entered into.

. A duty to exercise reasonable care,

h objective and subjective standards. may not be enough if more could osition.

licts of interest (section 175).

have, or could have an interest that e company. This applies in particular opportunity regardless of whether or

not to make a personal profit from the ird party, except where authorised to by a resolution of the shareholders)

sactions or arrangements with the posed transaction or arrangement of

transaction or arrangement with the ne interest to the other directors.

for the way directors are expected to ompany.

not the individual shareholders. As e action against a director for breach damages or compensation from the injunction as well. Failure to disclose the company also carries the risk of

wed to the company, the Companies a director in the company's name of action (i.e. a loss) arising from an default, breach of duty or breach of made against the director or a third

Directors

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party (or both), including form before or after the person se shareholder of the company.

However, it is only the compa derivative claim. In addition, th must go through, including cou sue. It is not therefore a straig need to approach with caution, those without any real merit.

Ratification

If a director commits negligenc can ratify the breach by passir shareholder, any votes he or sh family or other 'connected pe whether a simple majority has unanimous.

Conflicts of Interest

Company secretaries and com about conflicts of interests. Th duties specified under the Cor follows:

- Section 175 A duty proposed transaction
- Section 176 A duty
- Section 177 A d transaction or arrang

Duty to avoid conflicts of in

A **conflict of interest** occurs interests, one of which could *po* A conflict of private interest aris be perceived as being capable

For example, suppose the boa property. One of the directors increase in value subsequent to of interest, as his judgement manighbouring property rise in variations.

Other potential conflict situation company (e.g. an accountant to a person who is or may be in

Prior authorisation by the boa

ot matter whether the loss occurred nue the derivative claim became a

who may obtain compensation in a can action and criteria that the claim eholder is actually able to proceed to one that potential shareholders will ect directors from spurious claims or

or breach of trust, the shareholders

If the director in breach is also a
favour (as well as votes of his or her
led for the purposes of determining
the votes of all the members are

ould be prepared to advise directors as three out of the seven directors' ern conflicts of interest. They are as

rest (except where they arise out of a section 177 below).

m third parties.

rest a director has in a proposed to the company's other directors.

organisation) is involved in multiple tion for an act in relation to the other. any interest which *might* influence, or udgement even unconsciously.

any is discussing an investment in a property, which has the potential to company. That director has a conflict sire to see his own investment in his

ctorships, advisory positions with the lirector as well) and being connected

A conflict situation can potentia that a director's duty is not infrir

- the matter has been aut
- the director is not cou considered; and
- the matter is agreed by director.

For companies incorporated sir

The company's articles must be could invalidate an authorisation

For companies that were in exist

The shareholders should past conflicts, (See: Shareholders' Conflicts of Interest). This resolution the Companies House – File Resolution

The interested director must consider the matter with a view an existing or proposed transaction.

- at a meeting of the of <u>Interests</u>); or
- by notice in writing, (S *Transaction*);or
- by general notice, (See:

Often a director will take advan him to give a general notice of person connected with him. Su of interest should always be red

Even once the board has author a duty to act in a way that he company (section 172 duty).

Where a director is not aware transaction or arrangement in director is treated as being avaware.

Considerations for the board

When the board considers whe director must consider the duty most likely to promote the comp

The board may also want to in director in question may not t discussed.

oard of directors. The general rule is

and

the meeting at which the matter is

iting any vote cast by the interested

at there is nothing in the articles that ctors.

r 2008:

on enabling board authorisation of abling Directors to Authorise Conflicts
Companies House, (See: Letter to ts of Interest).

his interest, to enable the board to it. The declaration in relation to either be made in one of three ways:

Minutes - Declaration of Directors

n of Director's Interest in Proposed

of a Director's Interests).

e Companies Act 2006, which allows mpany or business, or of a specified ven at a board meeting. Declarations es.

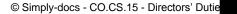
t, the director concerned is still under likely to promote the success of the

ere the director is not aware of the on is required. For this purpose an he or she ought *reasonably* to be

flict of interest

a conflict of interest, each authorising she considers, in good faith, will be 72 duty).

authorisation – for example, that the etings where the relevant matter is



Some situations where a decl

There are several situations wh

For example:

- Where a director sits or directorships authorised
- Where a director holds s
- Where a director owns his property may be affe
- Where a director has a firm that has an advisor legal or consultancy.

Situations where there is no r

A director need not declare an i

- if it cannot reasonable
- if the other directors a are treated as being aware); or
- if it concerns terms of by a meeting of the d

Who are connected person

Connected persons include the

- Family members (spou whom the director lives i
- Trustees of a trust of wh
- Corporate bodies to whith
- A director's business pa

'Connected persons' interests a also fall under the remit of secti

For example, if a director's so competing business, a potentia a declaration of his indirect inte authorisation for the purchase, duty as directors.

Substantial property transa

A substantial property transact non-cash assets to or from dire the Companies Act 2006 to pre

interest is advisable

tor to declare a conflict of interest.

of directors, he should have all of his lich he acts as a director.

potentially competing company.

company's property, or the value of ctivities.

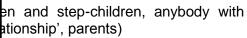
vith the company, or an interest in a ompany – for example, accountants,

f a conflict of interest

rcumstances:

give rise to a conflict of interest; or nd for this purpose the other directors which they ought reasonably to be

at have been or are to be considered be of the directors.



mily member, is a beneficiary

a director's indirect interest, and thus the Companies Act 2006.

to purchase shares in a potentially s. The director concerned must make tors, and the board should give prior onsider it does not interfere with their

elling by the company of substantial ed persons. There are restrictions in sferring substantial assets from or to





Directors

directors of the company, or fro consent is obtained.

Shareholder approval is require being transferred is either:

- more than £100,000,
- more than 10% of the company accounts),

(See: <u>Shareholders'</u> <u>Transaction</u>).

Payments under directors' ser from the scope of the substantia where an acquisition or dispo capacity as a shareholder of that

Members' approval is also no pursuant to a members' volunta requirement for approval rema receivership).

Proceedings of Directors

Under both Table A (Compani decisions can be made by the meeting), or unanimously in w Table A - the directors are able present, provided that they can or video conference).

Under both Table A and the Modirectors, but the quorum may companies with one director, the

The directors may appoint one votes then the chairman will have

Remuneration, Expenses,

Article 82 of Table A and article to remuneration. Table A state an ordinary resolution of the directors to determine the level

Under the Model Articles, a diservices as a director but for a remuneration is deemed to accontrary.

ted with a director unless shareholder

olution), where the value of the asset

by reference to the last set of an £5,000.

pprove Substantial Property

nents for loss of office are excluded ovisions, and approval is not required on a company and a person in his

ompany is being wound up (unless dministration (note, however, that the is in receivership or administrative

odel Articles (Companies Act 2006), jority vote in a meeting (i.e. a board es allow slightly more flexibility than when not all of them are physically ach other (for example, by telephone

for a meeting of directors is any two ne by a decision of the directors. For um of two is waived.

nairman, and if there is an equality of

ns

s both state that directors are entitled neration is decided by the passing of the Model Articles permit the other

ceive remuneration not only for his ken for the company. In both cases, the absence of any provision to the Article 83 of Table A and article for out of pocket expenses in discharge of their duties.

Article 87 of Table A and article and pensions. Table A states to no longer holds any executive Articles state that gratuities remuneration.

Note that if a director's service years, prior approval by way of

Loans to Directors

Loans to directors and the

The Companies Act 2006 remoinstead with a requirement for lo

A private company may make security in connection with a I transaction must first be appr <u>Shareholders' Ordinary Resolutor a Director</u>).

Exception for loans under

If the aggregate value of the £10,000, there is no need to aggregate value, meaning that over £10,000, it would require s

Other exceptions to the require

There are other exceptions to shareholder approval is not requestion to the company business, or where the criminal proceedings in connections.

Note 'connected persons'

Companies should watch out with a director requires shareh of a transaction between the co

Thus a loan to a 'connected per

Connected persons include the

 Members of the direct step children, children both state that directors may be paid stings which are connected with the

s allow directors to receive gratuities ed for any director who has held but th the company, whereas the Model included as part of a director's

a guaranteed term of more than two n is required.

es

ion on loans to directors, replacing it bject to shareholder approval.

ctors, or give a guarantee or provide rty to such a director. However, the solution of the shareholders, (See: to a Director or Acting as Guarantor

oans to a director does not exceed proval (note that the £10,000 is an ans to a director combine to a value

roval

shareholder approval. For example, or expenditure (of under £50,000) on director with funds to defend civil or

ons' provisions. Where a transaction roval will also be required in respect nnected' with the director.

hareholder approval.

ivil partner, live-in partner, children or n partner, and parents).



- A company in which exercise more than 2
- A trustee, where the
- A partner of the direc
- A legal firm where the

Practical steps for approva

In practical terms;

- The first step is to call <u>Loan and Call General I</u>
 - A declaration of intelline that a declaration mulling loan is to a director's
 - b. Discuss the proposed (ie. for a loan less t approving such a loa only approve the lo company.
 - c. If the board approve required (i.e. aggreg terms of the memor nature and purpose of
 - The nature of the trans
 - The amount of the lost
 - The extent of the con
 - d. Resolve to call a gen
- Secondly, the memorar with the written resolution at the company's regis meeting itself.
- Finally, hold the general the execution of the loa been approved at the pr

Simply Docs Loan Agreem

Simply-docs offers three templover joint property. These are s

The secured loans grant the co a weaker form of security than We also provide guidance on the the company's equitable charge or more of the share capital, or can

f the trust.

ne connected with the director.

a connected person is a partner.

Board Minutes - Consider Director's

the director requesting a loan (note ct interests' of the director, where the above).

shareholders' approval is not required ban will need board approval. When ndful of their duties; the board should it will *promote the success of the*

ermined that shareholder approval is 00), the directors need to agree the to the shareholders explaining the dum must set out the following:

hich it is required, and

/ transaction connected with the loan.

te a shareholders' written resolution.

illable to shareholders by being sent g is to be held, being made available fore the general meeting and at the

shareholders' approval. Then arrange of the loan agreement should have

unsecured, secured and secured
 <u>Directors' Loan Agreements</u>.

rge over the director's home. This is and Registry formalities are simpler. tions that need to be made to protect

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Directors

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Consumer Credit Act

The company should ensure the either by complying with the recone of the exemptions. Infor available on the Office of Fair T

Loans from Directors' to a Cd

A director (or shareholder) can organisation makes a loan to requirements, particularly if the a director may make the lo organisation, this will particula shareholder of the company w precedent, representations and

Whether the director will require commercial matter. However of personal tax position and may remark the commercial matter.

A loan from a director to a cordirectors will need to satisfy the success of the company (sect director of the borrower, that of directors the nature of his in Companies Act (again see about from voting on the resolution co

Our loan and finance docume company.

Indemnity and Insurance

Under the 2006 Act, a compa default, breach of duty or breac

However, this does not prever any liability attaching to them in trust. The purchase of such resolution of the shareholders (there is no equivalent provision plies with the Consumer Credit Act 1974, oans or by bringing the loan terms within including licensing and exemptions, is ft.gov.uk.

ny on the same basis as any commercial y be to ease a company's cash flow other sources of funding. It is likely that or onerous terms than a commercial ne director is the sole director and sole e director will need to include conditions nent.

n or charge interest on the loan is a arge interest should consider their own list tax advisor and consult HMRC.

bnflict of interest issues. The company's ement is on terms that will promote the 2006 – see above). If the lender is a ply with his duty to declare to the other transaction under section 177 of the prohibited under the company's articles

director seeking to make a loan to the

irector from any liability for negligence, company. Any attempt to do is void.

hasing insurance for its directors against ch negligence, default, breach of duty or ithorised either by the articles or by a rticle 53 of the Model Articles – note that