

Key Facts

Public Companies

DIRECTOR'S DUTIES

Every Jersey public company must have at least two directors. A director is defined as “a person occupying the position of director, by whatever name called”. On this basis, anybody who acts as a director (whether or not formally appointed as one) has the duties and responsibilities of a director.

Who can be a director?

Directors may either be individuals or companies registered as corporate directors. Note that individuals who are directors of corporate directors can still be personally liable as directors, if in practice they act as the directors of the underlying company.

The following persons may not act as directors:

- an individual who is less than 18 years old;
- an interdict (i.e., somebody who is mentally unwell); or
- a person who has been disqualified from being a director.

The duties of a director

Duty to act in good faith and with due care

A director must:

- act honestly and in good faith with a view to the best interests of the company;
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
- exercise their powers for the purposes for which they were granted and in accordance with the company's Memorandum and Articles of Association.
- not take a personal profit from any opportunities arising from his directorship (and must pay over any such profit to the company).

If a director breaches his duty to act in good faith and with due care as noted above, this will not be treated as a breach under the Companies (Jersey) Law 1991 if the company is solvent and all of the company's shareholders approve the director's actions.

Duty to disclose conflicting interests

A director has a duty to disclose to the company any direct or indirect interest they have in any transaction to be entered into by the company which materially conflicts with the interests of the company. Subject to the company's Articles of Association a Director who has disclosed their conflicting interest may vote and be counted in the quorum at the relevant board meeting considering the transaction.

Duty to find a suitable company secretary

The directors have a duty to find a suitable company secretary, taking all reasonable steps to secure that the company secretary appears to have the requisite knowledge and experience to discharge the role of secretary.

Miscellaneous duties of a director

Statutory books

The directors are responsible for ensuring that the company satisfies the following duties.

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Every public company must keep a register of its shareholders (known as members) including the following details:

- each shareholder's name and address;
- the number and class of shares held by each shareholder (including details of whether the shares are fully paid up or not); and the date on which each shareholder became or ceased to be a shareholder.

Every public company must keep a register of its directors and secretary, including the following details:

- the name and address of each director and the secretary;
- the nationality, date of birth and business occupation of each director; and
- the date on which each director and the secretary became, or ceased to be, a director or the secretary respectively.

Minutes

Every public company must prepare and record minutes of all proceedings at meetings of its shareholders (known as general meetings) and meetings of its directors (known as board meetings) in its company books.

General meetings

Every public company must hold an annual general meeting for its shareholders, unless all members have agreed that such meeting shall be dispensed with.

Accounts and Auditors

Every public company must keep accounting records which are sufficient to show and explain the transactions of the company and disclose with reasonable accuracy, at any time, the financial position of the company. The annual financial statements must be audited and a copy of the

audited accounts filed with the Jersey Registrar of Companies within seven months of the end of the accounting year. The financial statements are a matter of public record.

Annual return

Every company must (before the end of February in every year after its incorporation) deliver to the Companies Registry an annual return, together with a filing fee, which details, amongst other things, the company's directors, registered shareholders and their respective shareholdings.

Indemnity of directors

The Companies Law generally does not allow for a company to provide an indemnity to its directors. However, there are certain exceptions, including an indemnity for any liabilities incurred by a director in successfully defending civil or criminal proceedings and directors and officers' liability (D&O) insurance.

Relief for directors

Under the Companies Law, the court has power to relieve a director of liability in proceedings (or expected proceedings) for negligence, default, breach of duty or breach of trust against a director. Any relief by the court would be provided on the basis that it appears that the director is or may be liable in those proceedings, but that he has acted honestly and having regard to all the circumstances of the case, he ought fairly to be excused.

Companies in financial distress

When a company faces financial distress with the risk of insolvency, whilst the statutory duties remain, the primary focus of a director's duties will be to minimise loss to creditors. Directors facing such a situation should obtain specific legal advice.

A copy of the Companies (Jersey) Law 1991 as amended may be found at www.jerseylaw.je.

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