

Directors' duties

What are the new requirements?

The 2006 Act has codified (ie set out in statute) the duties of directors. Although this hasn't led to significant change in terms of the way in which directors should conduct themselves, it has led to enhanced requirements in terms of the way in which decisions are taken and documented.

What action should be taken?

Companies should be ensuring that all directors are fully aware of their duties and responsibilities under the 2006 Act – for example by having the duties set out in their service contracts and brought to their attention at board meetings. Companies should also be ensuring that decisions taken at such meetings are properly documented, especially where specific considerations under the new duty to promote the success of the company are relevant.

Directors' conflicts of interests

What are the new requirements?

The 2006 Act has introduced a new statutory duty on directors to avoid a situation where they have, or can have, a conflict or possible conflict of interest with the company's interests. However, independent directors now have the power to authorise conflicts. Private companies formed before 1 October 2008 need to obtain the consent of their shareholders in order for independent directors to gain this power.

What action needs to be taken?

Directors must identify any situation in which an actual or potential conflict exists. This will also be relevant when appointing any additional directors to the board who should declare any conflicts or potential conflicts from the outset. Pre-existing private companies will need to ensure that they have shareholder approval. The most straightforward way to achieve since the 2006 Act, is to amend their articles.