

Preamble: Role of Directors in a Community Interest Company⁽¹⁾

As with any other company, the Directors of a CIC occupy an important position of trust and general company law imposes on them a range of duties to the company and other responsibilities. The Directors (and in some circumstances the secretary) are also responsible for ensuring that the company meets its statutory and other obligations.

In addition to these general responsibilities CIC Directors (and, when they take collective decisions about the company, members) are also responsible for ensuring that the company is run in such a way that it will continue to satisfy the community interest test. In practice, this will mean having regard to the interests of the community the CIC is intended to serve and, in some cases, giving more weight to those interests than to generating financial returns for investors in the company.

In most companies the day-to-day management of the company is in the hands of the Board of Directors although certain functions may be delegated to specific Directors, such as the Chief Executive or Financial Director, or reserved to the members. As a company gets larger the direct control of daily activities by Directors becomes more difficult and functions have to be delegated to specific individuals. It is essential to good governance that the Directors clearly establish the lines of delegation. The authority and responsibility of those given delegated power need to be established and systems of control, including where appropriate internal audit and checks, must be set up.

It must be remembered that the term Director includes anyone who performs the role of a director whether formally appointed or not. A person who directs the policy and makes major decisions with regard to the company may therefore be regarded as a de facto Director or a person upon whose instructions the appointed Directors act (excluding those giving professional advice) may be regarded as a shadow Director. So, it is particularly important with CIC's where stakeholders are encouraged to participate in running the organisation to clearly establish people's respective roles.

It is also important not to take on the role of Director lightly; it is not a matter of status but a commitment to take on an important role and obligations. In particular, it should be noted that, while it is often a good idea to have "non-executive" Directors, who do not work full-time in the business, but who have particular skills and experience and can contribute an independent perspective to the management of the company, if things go wrong (particularly if they have not performed their duties diligently) they may well be held equally liable for any consequences with the "executive" Directors

(1) Healthwatch Gateshead (2015) On Director Role (web) *leaflet*

Definition: Roles and responsibilities of the board of directors in corporate governance

- The role of the Board is to plan and strategize goals and objectives for short and long-term good of the CIC and to put mechanisms in place to monitor progress against objectives.
- The main duties, for which all directors hold a legal responsibility, in accordance with the company's constitution, are to submit Annual Accounts within 9 months of year-end (by 31 December each year) and to submit an annual return, on time (by 20 June each year).
- Directors must exercise independent judgement and promote the objectives and aims and success of the organisation, exercising reasonable care, skill, and diligence in their roles.
- The main responsibility of a director is making sure the CIC abides by any laws and other regulations. It is an important position of trust. (Note: Directors are sometimes personally responsible for a CIC's inability to follow the rules).
- Directors must review, understand, and discuss, company goals, and ensure the organisation functions within its legal and financial requirements and strives to achieve best practice.
- Directors have a duty to declare direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company and a duty to declare an interest in a proposed transaction, as well as a duty not to accept a benefit from any third party.

- It is essential to good governance that directors clearly establish lines of delegation and recognise the authority and responsibility of those given delegated power.

The overall benchmark for a CIC director job description, is that of a reasonably diligent person with the general knowledge, skill and experience that could reasonably be expected from a person conducting a director's functions. Directors with specific professional training or skills (viz lawyer or accountant) are held to a higher standard in related issues than less qualified colleagues.

Companies Act 2006 (relevant extracts)

Companies Act 2006. The general duties are up to date with all changes known to be in force on or before 21 July 2022. There are changes that may be brought into force at a future date.

The general duties are:

171 Duty to act within powers

A director of a company must—

- (a) act in accordance with the company's constitution, and
- (b) only exercise powers for the purposes for which they are conferred (Modifications etc. not altering text, not permitted)

172 Duty to promote the success of the company

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company's employees,
- (c) the need to foster the company's business relationships with suppliers, customers, and others,
- (d) the impact of the company's operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieve those purposes.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

173 Duty to exercise independent judgment

- (1) A director of a company must exercise independent judgment.
- (2) This duty is not infringed by his acting—

(a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or

(b) in a way authorised by the company's constitution.

174 Duty to exercise reasonable care, skill, and diligence

(1) A director of a company must exercise reasonable care, skill and diligence.

(2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with—

(a) the general knowledge, skill and experience that may reasonably be expected of a person conducting the functions carried out by the director in relation to the company, and

(b) the general knowledge, skill and experience that the director has.

175 Duty to avoid conflicts of interest

(1) 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.

(2) This applies in particular to the exploitation of any property, information, or opportunity (and it is immaterial whether the company could take advantage of the property, information, or opportunity).

(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.

(4) This duty is not infringed—

(a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(b) if the matter has been authorised by the directors.

(5) The directors may give authorisation—

(a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or

(b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.

(6) The authorisation is effective only if—

(a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and

(b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

176 Duty not to accept benefits from third parties

(1) 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.

(2) A "third party" means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.

(3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.

(4) 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.

(5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

177 Duty to declare interest in proposed transaction or arrangement

(1) 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.

(2) The declaration may (but need not) be made—

(a) at a meeting of the directors, or

(b) by notice to the directors in accordance with—

(i) section 184 (notice in writing), or

(ii) section 185 (general notice).

(3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

(4) Any declaration required by this section must be made before the company enters into the transaction or arrangement.

(5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

For this purpose, a director is treated as being aware of matters of which he ought reasonably to be aware.

(6) A director need not declare an interest—

(a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest.

(b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or

(c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered—

(i) by a meeting of the directors, or

(ii) by a committee of the directors appointed for the purpose under the company's constitution.