

# Directors' Duties under the Companies Act 2006

Directors' duties have been evolved over the years through case law. The Companies Act 2006 has introduced a statutory statement of directors' duties for the first time. While these provisions of the new Act are expected to be effective from October 2008 it is clear that many of these provisions simply bring into statute and clarify requirements which have existed under case law. The following general duties of a director are included in the Act;

## **To act within the company's powers**

A director must act in accordance with the company's constitution and only use powers for the purpose for which they were given.

## **To promote the success of the company**

A director must act in a way which they consider most likely to promote the success of the company for the benefit of its members as a whole and in doing so should have regard to the following list of factors (which are not to be regarded as exhaustive)

- Long term factors and consequences of decisions
- The need to act fairly in relation to individual shareholders of the company
- Interests of other stakeholders including:
  - The employees
  - The company's suppliers, customers and other business relationships
  - The community, having regard to the impact of the company's operations on the community and the environment
- The desirability of maintaining the company's reputation for high standards in conducting their business

## **To exercise independent judgement**

This duty is not infringed by any director acting in accordance with an agreement entered into by the company that restricts the future exercise of discretion, or acting in accordance with the company's constitution.

## **To exercise reasonable care, skill and diligence**

A director must exercise the care skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions of the director in question and the general knowledge, skill and experience that the individual director actually has.