July 2020

Duties of a Company Director in Kenya

There are several duties of a company director in Kenya under the Companies Act 2015. Being a company director means that you are legally responsible for the running of the company. A director is defined under the Companies Act as a person occupying the position of a director of the company or any person in accordance with whose directions or instructions the directors of the company are accustomed to act. Companies in Kenya are required to appoint at least one director.

The general duties of directors in Kenya are based on common law rules and equitable principles. These duties that have been laid down under the Companies Act which all directors have to adhere to. These duties are discussed below.

Duty to Act Within Powers

One of the most important duties of a company director in Kenya is the duty to act within their powers under the company's constitution. The company's constitution is contained in the articles of association, which contains important rules for the company and its board of directors.

During registration of the company, one may use the model articles of association provided for under the Companies Act or use custom tailored articles of association. Directors are required to be conversant with the provisions of the company's articles of association which will typically contain certain restrictions on decision making. If a director exceeds his powers, his actions or decisions can be reversed, and the director could also be forced to compensate the company for any losses incurred.

Duty to Promote the Success of the Company

Among the duties of a company director set out in the law is the duty to promote the success of the company. A director must act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its shareholders. When making decisions, directors must also consider the interests of other stakeholders, including employees, suppliers, customers and communities. Directors are also required to consider the impact on the environment, the reputation of the company, company success in the longer term and all of the shareholders (including minority shareholders).

Decisions made by the board of directors should only be justified by the best interests of the company, not on the basis of what works best for anyone else, company executives or shareholders. Directors are required to be broad minded in the way that they evaluate those interests by paying regard to other stakeholders rather than adopting a narrow financial perspective.

Duty to Exercise Independent Judgement

A company director is required to exercise independent judgement. Directors are therefore required to develop their own informed view on the activities of the company. Directors should not avoid the responsibility of making independent decisions by relying on the knowledge or judgement of other directors or experts. Company directors should also not be mere delegates who simply implement the commands or directions of the company's shareholders.

Duty to Exercise Reasonable Care, Skill and Diligence.

A company director is required to exercise care, skill and diligence in performing the functions of a director. The benchmark is that of a reasonably diligent person with the general knowledge, skill and experience that could reasonably be expected from a person carrying out the director's functions.

Duty to avoid conflicts of interest.

Company directors have a duty to avoid situations in which the directors can have a direct or indirect interest that conflicts with the interests of the company. If a director is faced with a situation that may be in conflict with the company's interests, then that director is required to disclose to fellow directors of this potential conflict. The other non-conflicted directors will then decide how to manage or approve the conflict and maintain the integrity of the board's decision-making process.

The duty to avoid conflicting interests extends to contracts with the company, use of company information or opportunities and competing with the company. This duty also extends to the exploitation of property, information or opportunity, whether or not the company itself could actually take advantage of the property, information or opportunity in question.

Duty not to accept benefits from third parties.
A director of a company is not allowed to accept a benefit from a third party if that benefit is connected to the director's position in the company. Gifts or benefits from third parties are a potential threat to a director's objectivity in the performance of the director's duties and particularly decision making. Directors have a to disclose any direct or indirect interest in proposed or existing transactions or arrangements with the company.

Besides these general duties, other duties of a company director include the following fiduciary duties to the company:

Duty of confidentiality

Directors come across a lot sensitive information relating to the company in the course of exercising their functions. They therefore owe a duty of confidentiality to the company. This duty overlaps with the duties to promote the success of the company, to avoid conflicting interests and duties and not to make unauthorised profits.
Duty not to make unauthorised profits.

Any profit acquired by a director through holding the office of director must be accounted for to the company. The director may keep the profit if he has made full disclosure and the retention of the profit has been sanctioned by the company in general meeting. The director is liable to account to the company for any profits which he makes in contravention of this general rule.
For any further information or if you would like a free consultation on the duties and responsibilities of directors in a Kenyan company, please write to Bryan Yusuf at byusuf@bryanyusuf.co.ke.

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