



# Directors' Duties and Responsibilities

## Who is a Director

The Singapore Companies Act, Chapter 50 of Singapore (the "Act") defines a director as any person occupying the position of a director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act. This includes alternate and substitute directors.

A company must have at least one director who is ordinarily resident in Singapore.

Being "ordinarily resident in Singapore" means the director's usual place of residence is in Singapore. A Singapore Citizen, Singapore Permanent Resident, an EntrePass holder or an Employment Pass holder issued with such a pass to work in the company concerned and who has a local residential address can be accepted as a person who is ordinarily resident in Singapore.

With effect from 1 March 2009, any person aged 18 years and above may be appointed as a director. However, certain individuals (e.g. bankrupts and persons convicted of offences involving fraud or dishonesty) are disqualified from holding director positions.

## The Duties

Directors have three broad categories of duties: fiduciary duties, duties of skill care and diligence, and statutory duties. These duties derive from the Act and from common law as decided in court cases.

## The Fiduciary Duties

- Directors must act honestly and in the bona fide interests of the company. This is reflected in Section 157 of the Act which requires all directors to act honestly in discharging their duties.
- They should not allow themselves to be placed in a position where their personal interests conflict with their duty to the company.
- They must also exercise the powers for the purposes for which they were granted those powers and not to use their powers to further their own interests.



## The Duty to Exercise Care, Skill and Diligence

The running of any business generally requires a degree of risk taking and delegation of powers and responsibilities by directors. Care and skill in management are therefore relative concepts depending not only on the type of company and the circumstances involved, but also in the corporate role of the directors. For example, the level of care and skill a director is expected to exercise would depend on whether he is executive or non-executive director. In other words, directors are required to act with such care and skill as it reasonably be expected from them having regard to their knowledge and experience.

## Common Statutory Requirements under the Companies Act

### ● Annual General Meeting (AGM) and Annual Return (AR)

Directors are responsible for ensuring that the company complies with all of its statutory requirements on time. Two important ones would be holding of the company's AGM and the subsequent filing of AR by the specified due dates.

An AGM is a mandatory annual meeting of shareholders. At the AGM, the company will present its financial statements before the shareholders or members so they can raise any queries regarding their investment or other issues.

Directors are responsible for convening the company's AGM. If they do not do so, any member of the company can apply to Court for an AGM to be held. To convene an AGM, a notice giving the details of the AGM must be served. Directors must also prepare all the financial reports necessary for presentation during the AGM itself. The reports must be sent to the members at least 14 days before the AGM.

Directors should ensure that the company files its AR via Bizfile within one month after the AGM has been held.



### ● Registering an Office Address

A Singapore company is required to have a registered office address in Singapore where any mail or document can be delivered, and where the company can be contacted. Any change of registered office address must be lodged with ACRA within 14 days. Failure to provide a registered office address or lodging notification on change of registered office address is an offence. Both the company and its officers (including directors) are liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

### ● Keeping Records of Statutory Registers

Directors are to ensure that the company maintains certain registers including the following:

- Register of Members
- Register of Directors, Managers, Secretaries & Auditors
- Register of Directors' Shareholdings
- Register of Charges

Another important record that must be maintained is the company's accounting records, as well as any other document that can sufficiently explain the company's business transactions and financial position. These records must be kept accurate and up-to-date as they will be used to prepare the company's annual accounts and other documents required by law.

### ● Reporting Changes in the Company's Directors, Secretaries, Auditors and Managers

Directors must ensure that the company's statutory records are properly updated and maintained. They must also promptly notify ACRA on the appointment, cessation (including disqualifications) and any change in particulars of the company's officers. These would include details such as a change of name, nationality, identification or residential address.

### ● Reporting Changes in the Register of Directors' Shareholdings

This Register records any and all of the interests that a director may have in his company. These could be in the form of shares, debentures, participatory interests, rights, options or contracts. The law requires directors to fully disclose any interest they may have in the company. As such, directors must give notice in writing to the company if there are any changes in their shareholdings in order that the register can be kept updated. Failure to notify the company of any such change is an offence.

## Statutory Liabilities

The following table outlines some of the statutory liabilities of directors of Singapore-incorporated companies under the Act. This list is not exhaustive and there are other offenses under the Company Act and other statutes, which need to be considered. In the case of listed and/or public companies there are requirements under the SGX listing manual and the Code on Takeovers and Mergers. A breach of statutory duties carries with it certain sanctions. It is therefore important for a director to familiarize himself with these obligations and duties.

Section in the Act	Nature of Offence	Penalty/ Legal Liability
8A(8)	Knowingly/recklessly providing an explanation/ statement which is false/misleading in a material particular	\$20,000 fine or 2 years' imprisonment or both
8D(1)	Destroying, falsifying documents relating to the property or affairs of the incorporation with intent to conceal the affairs of the incorporation or to defeat the law	\$10,000 fine or 2 years' imprisonment or both
32(8)	Failure to comply with any restriction, limitation or prohibition that is to be included in the memorandum or articles of a private company	\$5,000 fine or 1 year imprisonment
76(5)	Allowing financial assistance by company for purchase of a subscription for shares in the company	\$20,000 fine or 3 years' imprisonment or both
123(4)	Failure to issue share certificates containing the prescribed information	Company & every officer —guilty of an offence*
128(3)	Failure to give notice of refusal to register transfer of shares, debentures or other interests in the company	\$1,000 fine and default penalty
130(2)	Failure to issue certificates for shares or debentures in the company	\$1,000 fine and default penalty
132 & 133	Failure to register charges	\$1,000 fine and default penalty
142 & 143	Failure to have registered office of company in Singapore open for the prescribed time and failure to file notice of situation of such office	For each offence \$5,000 fine and default penalty
144(2)	Authorising use of seal without the company's name appearing, issues or authorizes letters, etc without the company's name appearing or issues bills of exchange, cheques, etc. wherein the company's name does not appear	Company would be guilty of an offence*
156(10)	Failure to disclose interests in contracts, property or offices, etc	\$5,000 fine or 1 year imprisonment

\* Section 407 provides for a general penalty of a fine not exceeding S\$1,000. Other penalties may be imposed.





Section in the Act	Nature of Offence	Penalty/Legal Liability
157	Failure to act honestly and use reasonable diligence in the discharge of the duties of his office; making improper use of information to gain an advantage for himself or any other person or to cause detriment to the company	\$5,000 fine and statutory liability for any profit made or damage suffered by the company or 1 year imprisonment
161(7)	Knowingly issuing shares without prior approval of the company	Liable for a period of 2 years to compensate the company and person to whom shares were issued for any loss or damage
162(4)	Failure to comply with the restrictions on loans to directors	\$20,000 fine or 2 years' imprisonment
163(7)	Failure to comply with the restrictions of loans to persons connected with the directors of lending company	\$20,000 fine or 2 years' imprisonment
164(17)	Failure to comply with the requirements relating to the keeping of a register of director's shareholdings	\$15,000 fine or 3 years' imprisonment. Further fine of S\$1000 per day for continuing offences after conviction
164A(2)	Failure to disclose emoluments and other benefits of the directors of the company or its subsidiary	\$10,000 fine
165(9)	Failure to disclose to the company the required notice in writing of particulars relating to himself in connection with shares, debentures, etc	\$15,000 fine or 3 years' imprisonment. Further fine of S\$1000 per day for continuing offences after conviction
173(7B)	Failure to comply with the requirement with regard to the keeping of register of directors, managers, secretaries and auditors and having it open to inspection, and filling the returns with the Register of Companies	\$5,000 fine and default penalty
173(7C)	Failure to notify the company of the change in his residential address and to lodge with the Registrar notification of such change	\$5,000 fine and default penalty
175(4)	Failure to hold the annual general meeting	\$5,000 fine and default penalty
181(2)	Failure to state in notice of meeting that members may appoint proxies	Guilty of offence*
181(3)	Failure to issue invitation to appoint proxies to all members	S\$2,000 fine
186(3)	Failure to file copies of special resolutions and resolutions, or agreements binding any class of shareholders whether agreed to by all the members of that class or not, etc with the Registrar of Companies	\$1,000 fine and default penalty

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Section in the Act	Nature of Offence	Penalty/Legal Liability
188(4)	Failure to cause proper minutes of general meetings and directors' meetings to be kept	\$2,000 fine and default penalty
190(7)	Failure to keep a register of members	\$1,000 fine and default penalty
197(7)	Failure to file annual return	\$5,000 fine and default penalty
395(2)	Failure to take reasonable precautions for guarding against falsifications of registers, minute books or books of account, etc	\$1,000 fine and default penalty
401(1)	Knowingly authorizing the advertising, circulation or publication of false and misleading statement as to amount of corporation's capital	Guilty of offence*
401(2)	Wilfully making or authorizing false statements or misleading in any material particular in any return, report, certificate, balance sheet, etc	\$50,000 fine or 2 years' imprisonment or both
403(2)(a)	Wilfully paying or permitting dividends to be paid to shareholders except out of profits unless pursuant to Section 69	\$5,000 fine and personal liability to creditors to the extent by which dividends so paid exceeded the profits or 12 months imprisonment

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