

ENGLISH CHESS FEDERATION



**MEMORANDUM FOR DIRECTORS
SUMMARISING THEIR DUTIES**



1. Overview

This memorandum is intended to act as a guide for directors on their legal duties under English company law and best practice extending beyond strict legal requirements.

This is intended to provide a basis both for effective working by the Board collectively and in the presentation of the ECF and the Board externally.

2. General duties

A company is a legal entity which is distinct from its members (i.e. Full Members, in the case of the English Chess Federation (“ECF”)). While the company’s members have rights in the company, responsibilities to the company are generally owed by those entrusted with its management, namely the directors.

The Companies Act 2006 (“CA 2006”) codifies the key directors’ duties with a view to reflecting in statute the position under the common law and equitable principles, but with some significant changes. The statutory duties replaced the former unwritten duties, but common law rules and equitable principles continue to be used in interpreting and applying the statutory duties.

It is important to recognise that the codified duties do not cover all of the duties a director may owe to a company, for example the duty not to disclose the company’s secrets or confidential information, and the duty to consider the interests of creditors in times of threatened insolvency.

Directors generally owe these duties solely to the company, and only the company is able to enforce them. However, the members may in certain circumstances be able to bring a derivative action, albeit essentially on the company’s behalf.

In addition to statutory and common law duties, further duties are imposed on the ECF’s directors by the terms of The Directors and Officers Responsibilities Regulations. These duties are dealt with in 6. below.

Under CA 2006, directors owe the following duties to the company:

(i) Act within powers

Directors must act in accordance with the company’s constitution and only exercise their powers for proper purposes.

(ii) Promote the success of the company

Directors must act in the way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. The decision as to what will promote the success of a company is ultimately one for the good faith judgement of the directors.

Directors must have regard to the following matters (amongst others) when discharging

this duty:

- the likely consequences of any decision in the long term;
- the interests of the company's employees;
- the need to foster the company's business relationships with those with whom it deals;
- the impact of the company's operations on the community and the environment;
- the desirability of the company maintaining a reputation for high standards of business conduct; and
- the need to act fairly as between members of the company.

A director is only obliged to *have regard* to the factors listed above and is not required actively to promote the interests of the environment, the community and so forth. However, directors should ensure that they are able if necessary to demonstrate that they had regard to the above matters (together with any other relevant matters) when making decisions affecting the company, whether at board meetings, or acting alone as an executive director making decisions on behalf of the company.

(iii) Exercise independent judgement

Directors must exercise independent judgement. This duty does not preclude the taking of professional advice, nor will it prevent a director from acting in line with the company's constitution or in accordance with the terms of any agreement entered into by the company.

(iv) Exercise reasonable care, skill and diligence

Directors must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both (i) the general knowledge, skill and experience that may be reasonably expected of a person carrying out the functions carried out by the director in relation to the company (the objective test), and (ii) the general knowledge, skill and experience that the director actually has (the subjective test). The practical consequences of the objective and subjective limbs of this duty would, for example, include that a director who is a qualified accountant would be expected, where this superior knowledge and skill is applicable, to show a higher standard of skill, care and diligence than a director without such qualifications.

(v) Avoid unauthorised conflicts of interest

Directors must avoid situations in which they have, or may have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. This duty 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), but does not apply to conflicts of interest arising in relation to transactions or arrangements with the company. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, nor if the matter has been authorised by the board of directors.

(vi) Do not accept benefits from third parties

Directors must not accept any benefit from a third party conferred by reason of their being a director or their doing, or not doing, anything as director. This duty is not infringed if the acceptance of the benefit could not reasonably be regarded as likely to give rise to a conflict of interest. Directors will be liable to pay to the company any benefit which they receive in breach of this duty. The value of the benefit is immaterial in assessing whether this duty has been breached, and the board of directors may not authorise the acceptance of any benefit in breach of this duty.

(vii) Declare interests in proposed transactions or arrangements

If a director has any direct or indirect interest in any proposed transaction or arrangement with the company, they must declare both the nature and the extent of that interest to the other directors. The relevant director must do so before the company enters into the transaction or arrangement. The relevant director would ordinarily not participate in any board decision relating to any such transaction or arrangement.

To the extent that an interest is not so disclosed in advance of a transaction, directors have a separate duty to declare (as soon as is reasonably practicable) any direct or indirect interest in a transaction or arrangement that has already been entered into by the company.

Directors need not, however, declare any interests which cannot reasonably be regarded as likely to give rise to a conflict of interest.

3. Additional fair dealing provisions in CA 2006

Companies are not, in most circumstances, permitted to enter into arrangements under which a director or a connected person is to acquire from, or to dispose to, the company or any subsidiary, a non-cash asset worth in excess of £100,000 or 10% of the company's net assets (subject to, in the latter case, a de minimis £5,000 limit) unless the arrangement is first approved at a general meeting or if the arrangement is made conditional upon obtaining such approval. If it is not, the contract can be set aside and the director who was party to the arrangement and any director who authorised it are liable to account for any gain made as a result of the arrangement and to indemnify the company against any resulting loss.

Companies may only grant loans or provide security or other financial accommodation to directors and their connected persons so long as approval has been obtained from members at a general meeting.

4. Insolvency

A director may in certain circumstances become liable to contribute to any deficiency suffered by the creditors of the company if the company becomes insolvent.

(i) Fraudulent purpose

A director may be held liable to contribute to the company's assets on its winding up if it is shown that he was knowingly a party to the carrying on of the company's business with the intention of defrauding creditors of the company or of any other person, or for any fraudulent purpose. Such conduct also constitutes a criminal offence.

(ii) Wrongful trading

A director of the company may be personally liable to contribute to its assets if at any time before the company went into insolvent liquidation (i) the director knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and (ii) he then failed to take "every step" to minimise the potential loss to the creditors of the company. The standard required as to what the director ought to know, the conclusions he ought to reach and steps he ought to take is that which would be known, reached or taken by a reasonable diligent person with the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as those of the director in relation to the company and with the general knowledge, skill and experience that the director has. Thus, there is both an objective and subjective test.

(iii) Transactions at an undervalue and preferences

A liquidator (or administrator) can obtain a court order setting aside certain transactions made when the company was insolvent, or which caused the insolvency and which were made at an undervalue. A transaction is at an undervalue if the company receives no consideration for it, or significantly less consideration than it provides itself. The liquidator (or administrator) may also set aside transactions which "prefer" any creditor of the company.

5. Disqualification

Apart from personal liability, where a director engages in fraudulent or wrongful trading or has been found guilty of other misconduct in connection with a company and is held to be unfit by the court, he may under the Company Directors Disqualification Act 1986 be disqualified by court order for up to fifteen years from acting as a director or from having any involvement in the promotion, formation or management of a company.

6. Other statutory provisions

There are a great number of further statutory provisions imposing duties and liabilities on directors, such as, by way of example, those relating to health and safety, corporate manslaughter and bribery, but any detailed coverage of such provisions falls outside the scope of this memorandum.

7. The Directors and Officers Responsibilities Regulations

The Directors and Officers Responsibilities Regulations impose a number of further obligations on the directors of the ECF. The regulations contain a detailed set of responsibilities specific to the role that any given director fulfils on the board and each director will need to familiarise himself or herself with those applicable to the relevant post. The regulations also contain a set of more general obligations applicable to all directors, including engaging actively in their roles, regularly attending meetings, responding in a timely manner and with due diligence to communications from stakeholders and acting as ambassadors for, and promoting the interests of, the ECF at all times.

8. Code of Conduct

The ECF Board has also adopted a Code of Conduct relating to the behaviour of Directors which is set out at Appendix 1 and which all Directors are expected to follow in order to ensure the effective operation of the Board.

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ECF Code of Conduct

Objectives

1. The objectives of the Code of Conduct are to ensure that:
 - (a) The Board functions effectively to discharge its duty to manage the affairs of the ECF.
 - (b) Serving on the Board is a positive and fulfilling experience.
 - (c) The Board presents a favourable image to ECF members and others.
 - (d) Recruitment of replacement Board members is encouraged.

Respect

2. The cornerstone for developing practices consistent with these objectives is the demonstration of respect for the work and views of others.
3. Constructive disagreement and challenge is key to the rigorous management and operation of a diverse organisation with a limited income and high expectations. Vigorous debate is to be expected and encouraged but combined with respect and recognition of the merit of opposing views.
4. Consistently with this, board Members should act collegially and collaboratively. They should be careful in public and private that they do not misrepresent or denigrate their colleagues. Criticism should be proportionate and will relate to issues, rather than the character or motives of the Board Member.

Collective Responsibility

5. Board members typically have multiple roles within the chess community and will express opinions accordingly.
6. However, there is a duty of collective responsibility meaning that when speaking about matters where a personal view is being expressed, it should be made clear that the individual is speaking in a personal capacity, and that the Board view is properly represented.

Social Media

7. This collective responsibility applies in particular with media, including but not limited to social media.