

Duties of a Director under British Virgin Islands Law

Briefing Summary: The purpose of this guide is to give the reader a broad overview of the duties and liabilities imposed on a director of a company incorporated in the British Virgin Islands ("BVI").

Service Area: Corporate, Regulatory

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The BVI Business Companies Act, 2004 (the "Act") provides that, subject to a BVI company's memorandum and articles of association ("M&A"), the directors of a company have all the powers necessary for managing, directing and supervising, the business and affairs of the company.

The duties and liabilities set out below apply equally to directors, "de facto" directors (persons acting as a director and carrying out the functions of a director, but who have not been formally appointed), and purported "nominee" directors. Please note that BVI law does not recognise the concept of "nominee director". If a person is appointed as a director, he will have all of the same duties and liabilities imposed on a director, despite the nominee tag.

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In addition, a director remains liable in respect of any acts or omissions or decisions made whilst he was a director, even after he has resigned as a director.

Directors' duties

Fiduciary Duties

A director is required to act honestly, in good faith and in a manner which he believes is in the best interests of the company. In addition, a director must exercise his powers for a proper purpose and shall not act, or agree to the company acting, in a manner that contravenes BVI legislation or the company's M&A.

Where expressly permitted to do so by the company's M&A, BVI law allows the director of a subsidiary company to act in the best interest of its holding company, rather than the company itself. The Act also allows a director of a company involved in a joint venture to act in the best interest of the shareholder(s), even if his actions are not in the best interest of the company (provided he is authorised to do so by the company's M&A).

The directors' duties are owed to the company itself, which may be equated to the collective interests of the shareholders. The fiduciary duties are not owed to other companies with which the company is associated, to other directors, or to any individual shareholder. However, on insolvency (or doubtful solvency) the director's duties switch from what is considered to be in the best interest of the company, to what is in the best interest of the company's creditors.

Duty of care

In addition to the fiduciary duties, each director owes a duty of care, diligence and skill to the company. The duties of care, diligence and skill have been traditionally regarded as subjective (i.e. the director must exhibit such skill as he actually possesses). However, more recently it is clear that a director is required to exercise his powers and perform his duties in a way that a reasonable director would do in the same circumstances (taking into account the nature of the company, the decision being made as well as the position of the director and the nature of the responsibilities being undertaken). Failure to perform his duties in this manner may leave the director liable for damages, if the company suffers a loss as a result of his actions.

When carrying out his duties, a director may rely on various records, financial information and any professional or expert advice given to him. However, this only applies when the director acts in good faith and makes proper inquiry in relation to this information. A director cannot rely on any information or professional advice which he knows is incorrect or should not be relied on.

Disclosure of interest

The Act provides that a director shall " *forthwith, after becoming aware of the fact that he is interested in a transaction entered into or to be entered into by the company, disclose the interest to the board of the company*".

A director is therefore required to disclose any interest that he may have in a transaction, which the company is entering into, to the other directors. Failure to do so means the transaction may be deemed void and the director commits

Carey Olsen (BVI) L.P. is registered as a limited partnership in the British Virgin Islands with registered number 1950.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (BVI) L.P. 2026.

