

A quick guide to Directors' Duties in the Cayman Islands

GUIDE

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The duties of directors of companies incorporated in the Cayman Islands are governed primarily by the Companies Law (2013 Revision) (the **Law**) and precedents established by the common law. The Statement of Guidance for Regulated Mutual Funds published by the Cayman Islands Monetary Authority (**CIMA**) is also instructive for directors of Cayman Islands mutual funds. This quick guide provides an overview of some of the main duties of directors of Cayman Islands companies. Please note that a breach of the duties outlined below may be waived by obtaining the fully informed consent of the shareholders.

Statutory Duties

Duty	Description	Relevant Section of the Law
Registered Office	Directors must ensure the Registrar of Companies (ROC) is notified of the details of a company's registered office and any changes to the registered office.	Sections 11 and 51
Register of Members	Directors must maintain a register of company members, containing the names and addresses of all members and details of the shares held by each member at the registered office of the company in the Cayman Islands. (The register of members of an exempted company may be kept at any location).	Section 40
Annual Returns	Directors are responsible for filing annual returns and paying the prescribed fee to the ROC.	Section 41
Register of Mortgages	Directors of limited companies must maintain a register of mortgages and charges containing details of all mortgages and charges affecting company property.	Section 54
Register of Directors	Directors must maintain a register of directors at the registered office of the company, provide a copy of the register to the ROC and notify the ROC of any changes of directors.	Section 55(1)
AGM	Every company (other than an exempted company) must hold a general meeting at least once per year.	Section 58
Accounting Requirements	Directors must ensure that the company keeps proper accounts, which provide a true and fair view of the state of the company's affairs and explain its transactions.	Section 59
Special Resolutions	Directors must ensure that a copy of any special resolution passed by the company is forwarded to the ROC within 15 days.	Section 62

Fiduciary Duties

Good faith	Directors must act loyally, honestly and in good faith in what they consider to be the best interests of the company. The test is subjective, although the Court will test whether the director genuinely believed that he was acting in the company's best interests. The duty is owed to the company alone, and not to its shareholders, subsidiaries, holding company or associated companies.
Proper Purpose	Directors must exercise their powers only for the purpose for which they were conferred and not for any personal or collateral purpose.
Confidentiality	Directors owe a duty of confidentiality to the company and may only use or disclose information obtained in confidence in the course of their directorships for the benefit of the company.
Avoid Conflicts	Directors must avoid placing themselves in a position where there is an actual or potential conflict between their duty to the company and a duty owed to another person or entity.
Declare Interests	Directors must disclose any interest in any proposed or existing transaction involving the company.
No Secret Profits	If a director becomes aware of any opportunity while acting as a director, he cannot make a personal profit from it.
Promote Success	Directors must act in a manner likely to promote the success of the company and act for the benefit of its members as a whole.
Exercise Independent Judgment	Directors must exercise independent judgment, including when delegating matters and deciding whether to follow any advice obtained, and may not for example agree to exercise their powers in accordance with instruction from a third party.
No Fettering Discretion	Directors must not restrict their ability to exercise independent judgment on the company's behalf. For example, a director cannot agree with a third party to vote in any particular way at a board meeting.
No Misapplication of Property	Directors must not retain for their own benefit or pass to third parties property forming part of the business of the company.
No Exceeding Authority	Directors must not act beyond the powers allocated to them.
Company's Governing Documents	Directors must act in accordance with the company's articles of association, constitution and shareholder resolutions.

Tortious Duty of Care, Skill and Diligence

Care, Skill and Diligence	Directors must act competently. Even if a director's loyalty cannot be faulted, his incompetence may still amount to a breach of duty. However, directors are not liable for mere errors of judgment.
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Duties Arising from the CIMA Statement of Guidance for Regulated Mutual Funds

Supervise and Oversee	A fund's governing body is required to supervise and oversee a fund's activities. This requirement underpins the other principles established by the Statement of Guidance and includes a requirement that the governing body of a fund meets at least twice per year.
Internal Records	A fund's operators must ensure internal documents are maintained which fully record the proceedings of meetings of the fund's governing body.
Appropriate Reporting	Communication between the operators of a fund and its governing bodies should include appropriate reporting on compliance and transparency with investors where disclosure is appropriate.
Risk Management	A fund's risks should be appropriately managed, mitigated and discussed at meetings of the fund's governing body.

Contacts

Christopher Harlowe
Partner, Cayman Islands
+1 345 814 9232
christopher.harlowe@mourant.com

Simon Dickson
Partner, Cayman Islands
+1 345 814 9110
simon.dickson@mourant.com
