

A quick guide to directors' duties - Cayman Islands exempted companies

Last reviewed: April 2021

The duties of directors of exempted companies incorporated in the Cayman Islands are governed primarily by the Companies Act (2021 Revision) (as amended, the **Companies Act**) and principles 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 exempted companies. Please note that, in certain circumstances, a breach of the duties outlined below may be ratified by obtaining the fully informed consent of the shareholders.

| Duty | Description |
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| Statutory duties | |
| 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. |
| Register of Members | Directors must maintain a register of members which conforms with the requirements of the Companies Act. The register of members of an exempted company may be kept at any location. However, a copy must be kept at the registered office of the company in the Cayman Islands. |
| Annual Returns | Directors are responsible for filing annual returns and paying the prescribed fee to the ROC. |
| Register of Mortgages | Directors must maintain a register of mortgages and charges containing details of all mortgages and charges over the company's property. |
| 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 within 30 days. |
| AGM | An exempted company is not required to hold an annual general meeting of members. |
| 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. |
| Special resolutions | Directors must ensure that a copy of any special resolution passed by the company is forwarded to the ROC within 15 days. |
| Duty of care, skill and diligence | |
| Care, skill and diligence | Directors must act competently. Even if a director's loyalty cannot be faulted, his negligence may still amount to a breach of duty. However, directors are not generally liable for mere errors of judgment. |

Fiduciary duties

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| Good faith | Directors must act loyally, honestly and in good faith in what they consider to be the best interests of the company. 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 as a whole, and not to its individual members, 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 personal 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 granted to them. |
| Company's governing documents | Directors must act in accordance with the company's articles of association, constitution and member resolutions. |

Duties arising from the CIMA Statement of Guidance for Regulated Mutual Funds

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| 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. |

For further details, please see our guide on [Cayman Islands exempted companies - Directors' duties and liabilities](#).

Contacts

A full list of contacts specialising in Cayman Islands law can be found [here](#).