



Duties of Directors of Cayman Companies

This briefing seeks to provide a broad outline of the duties of directors of Cayman companies and in particular those companies which are structured as investment funds, it is not intended to be a comprehensive guide and specific advice should always be sought on any particular circumstances where there are any questions relating to these duties.

Duties of directors of companies in the Cayman Islands are determined by Cayman common law and statute and are summarised below. These duties are generally owed to the Cayman company but can in certain circumstances be owed directly to the company's shareholders or creditors.

Common Law Duties

A director of a Cayman company must act in good faith as a fiduciary of their company. These duties generally oblige Cayman directors to act in the best interests of their company, to exercise their powers independently and for the purposes for which they were conferred, to avoid conflicts between their own interests and those of their company and to avoid the making of a secret profit. Whilst a Cayman company remains solvent its best interests are generally considered to be those of its shareholders as a whole but where an insolvency becomes likely creditors' interests will start to outweigh those of shareholders.

A Cayman company director also owes a duty of care, diligence and skill which should be expected of a reasonable director acting in similar circumstances subject to an increased standard to reflect the actual skills and experience possessed. Generally this will amount to a duty to maintain a knowledge of the business of the Cayman company and to supervise the services delegated by the company to its service providers.

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Common law duties applicable to directors are generally varied under the terms of the articles of association of a Cayman company including provision for delegation of directors powers to service providers, indemnification and exculpation provisions and provisions that a director may continue to act and need not account for personal profits gained where their interests conflict with those of their company subject to the disclosure of those interests to the board.

The Cayman Islands Monetary Authority has published a Statement of Guidance for Regulated Mutual Funds – Corporate Governance which is a useful guide and reflects Cayman law and statutory obligations applicable to an investment fund which is registered with that Authority. The guidance is also useful for directors acting for funds which are not registered with the Authority and can be found here - https://www.cima.ky/upimages/commonfiles/StatementofGuidance-CorporateGovernanceforMutualFunds_1519655464.pdf

Statutory Duties

The Companies Law (Revised) contains duties and requirements relating to the maintenance of certain registers and accounts and local registry filings and the Mutual Funds Law (Revised) includes obligations relating to the filing of offering memoranda and financial information with the Cayman Islands Monetary Authority which together with money laundering obligations imposed under the Proceeds of Crime Law (Revised) will generally be delegated by the company to its service providers including its registered office service provider, administrator, compliance professionals, auditors and legal advisers.

The Directors Registration and Licencing Law (Revised) requires directors of investment funds registered with the Cayman Islands Monetary Authority and of certain companies registered as excluded persons under the Securities Investment Business Law (Revised) to register with the Authority and to pay an annual fee.

The Penal Code (Revised) contains specific offences relating to the publication of false or misleading statements with intent to deceive shareholders or creditors which together with liability in tort for negligence and/or deceit will be applicable when considering the publication of an offering document for an investment fund.

The Companies Law (Revised) also contains a number of specific provisions relating to liabilities of directors on the winding up of a Cayman company relating to fraudulent trading, fraudulent concealment, disposal or destruction and failure to disclose information to liquidators.

This briefing has been prepared on the basis of the current law of the Cayman Islands and does not address the laws or any other jurisdiction which may have an impact on the duties of a director of a Cayman company where such laws are applied.

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