

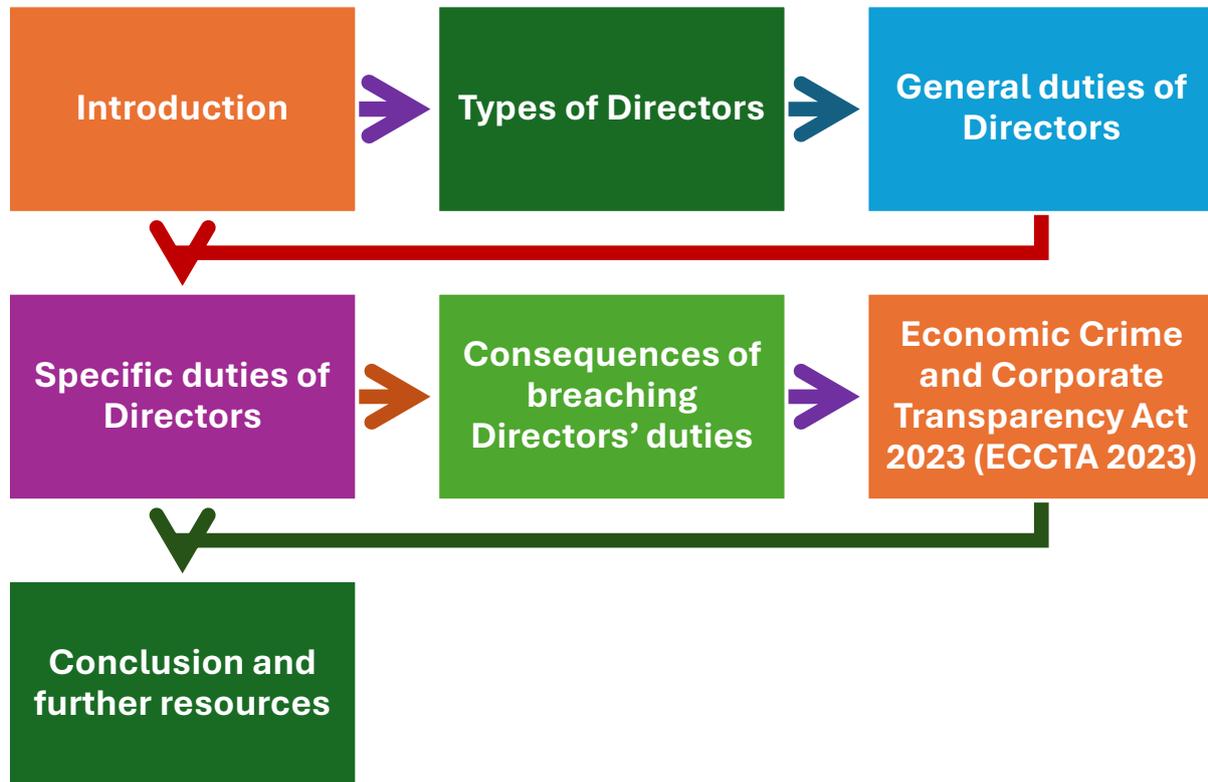
Directors' Duties Toolkit – A practical guide for entrepreneurs



"The price of greatness is responsibility."
– Winston Churchill

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Introduction

- **Purpose of the Toolkit:** This toolkit provides guidance on directors' duties under the Companies Act 2006 (CA 2006) in England and Wales, focusing on helping new company directors understand their legal responsibilities.
- **Applicability:** The principles outlined in this toolkit apply to England and Wales. While the Companies Act 2006 also applies to Scotland, there may be procedural differences in enforcement.



Types of directors

1. De Jure Director - A legally appointed director, including:

Executive Director: Senior managers involved in the company's daily operations. They implement policies, make operational decisions, and ensure the company's strategic goals are met. As full-time employees, they draw salaries and benefits, participating in board meetings to inform strategic decisions based on their managerial experience.

Nominee Director: Appointed by a shareholder or stakeholder.

Non-Executive Director: Provide independent oversight without participating in daily management, focusing on policy, strategy, and risk management. They monitor executive performance and contribute external insights to strategy development. As non-employees, they receive fees for their board services and offer unbiased judgment due to their lack of direct involvement in operations.

2. De Facto Director -

Someone who acts like a director and makes key decisions, even if they were never formally appointed. The law treats them as directors, meaning they can be held liable for breaches of directors' duties.

Example of a De Facto Director:

In *Re Hydrodan (Corby) Ltd (1994)*, the court found that a person who acted as a director and made strategic decisions was legally responsible as a de facto director, even though they were not officially appointed.

 **Risk:** If you act like a director, you may be held accountable as one, even without a formal title.

3. **Shadow Director** - Someone who does not take an official director role but influences board decisions behind the scenes. If the board follows their instructions, they can be treated as directors under the law.



📌 **Example of a Shadow Director:**

In *Secretary of State for Trade and Industry v Deverell (2001)*, a business consultant influenced board decisions without being formally appointed. The court ruled that they were a shadow director and legally responsible for company decisions.

⚠️ **Risk:** Shadow directors can be held liable for company mismanagement, including wrongful trading and fraud.

General duties of directors (CA 2006)

As a director of a company, you have a number of duties which are found in the [Companies Act 2006](#). It is important that you are aware of these duties when you are making decisions in your company.



Understanding these duties is not just a legal obligation, but a cornerstone of sound decision-making—turn the page to explore the key responsibilities every director must know! 🖱️

Duty to act within powers (Section 171):

Directors must act in accordance with the company's constitution and only use their powers for proper purposes. When your company was formed, it adopted articles of association—its internal rulebook. Whether you used model articles or drafted your own, you must know and follow these rules.



📌 *Example of a Breach:*

In *Hogg v Cramphorn Ltd (1967)* the directors issued shares to prevent a hostile takeover, which was found to be an improper use of power.

Duty to promote the success of the company (Section 172):

Directors must act in a way they believe will promote the company's success for its shareholders' benefit.

- ◆ **Key Considerations (s.172(1))** - Directors must consider:
 - **Long-term consequences** of their decisions
 - **Employees' interests**
 - **Relationships with suppliers and customers**
 - **Impact on the community and environment**

- ◆ **Duty to Creditors (s.172(3))**

If the company is insolvent (or nearing insolvency), directors owe a duty to act in creditors' interests rather than shareholders'.

📌 *Example of a Breach:* In *BTI 2014 LLC v Sequana SA (2022)*, the UK Supreme Court (the highest domestic court) confirmed that directors must consider creditors' interests when insolvency is foreseeable.

Duty to exercise independent judgement (Section 173):

Directors must make decisions independently, free from external influence.



✦ **Example of a Breach:** A director blindly following a dominant shareholder's instructions without exercising their own judgement.

Duty to exercise reasonable care, skill and diligence (Section 174):

Directors must act with the care, skill, and diligence. This will be based on:

- The general knowledge and experience of a reasonably diligent person in their position
- Any special skills they claim to have, e.g., if they are a qualified accountant

✦ **Example of a Breach:** In *Re D'Jan of London Ltd (1994)*, a director negligently signed an insurance proposal without reading it, leading to significant financial loss.

Duty to avoid conflict of interest (Section 175):

Directors must avoid situations where their personal interests conflict with the company's interests. They must not exploit any property, information or opportunity gained in their role as director.

✦ **Example of a Breach:** In *IDC v Cooley (1972)*, a director personally took a business opportunity that rightfully belonged to the company.

Duty to not accept benefits from third parties (Section 176):

Directors must not accept gifts or benefits that could influence their decision-making.

✦ **Example of a Breach:** Accepting an expensive holiday from a supplier in exchange for awarding them a contract.



⚠ **Risk:** this could also expose a director to criminal liability under the Bribery Act 2010.

Duty to declare interests in proposed transactions (Section 177):

Directors must declare any personal interest in a proposed transaction or arrangement with the company.

✦ **Example of a Breach:** A director failing to disclose their financial interest in a contract the company is entering into.



Specific duties of directors

The Companies Act 2006 imposes a number of other specific duties on directors, including:

Maintaining adequate accounting records £

- Directors must ensure that the company's financial records are accurate and up-to-date and represent a true and fair view of the company's financial position

Filing with Companies House

- Directors are responsible for submitting annual accounts, confirmation statements and other key documents with Companies House, e.g., when there is a change to the company's rules or its directors

Compliance with tax obligations £

- Directors must ensure that the company complies with tax laws, including registration, administration and payment requirements for taxes including PAYE, VAT and corporation tax

Consequences of breaching directors' duties

Disqualification:

Directors can be disqualified from holding directorship positions for up to 15 years under the Company Directors' Disqualification Act 1986.

Personal liability:

Directors may be held personally liable for company debts or losses resulting from breaches of duty.

Criminal penalties:

Breaches of company law can result in fines or prosecution.

Civil action:

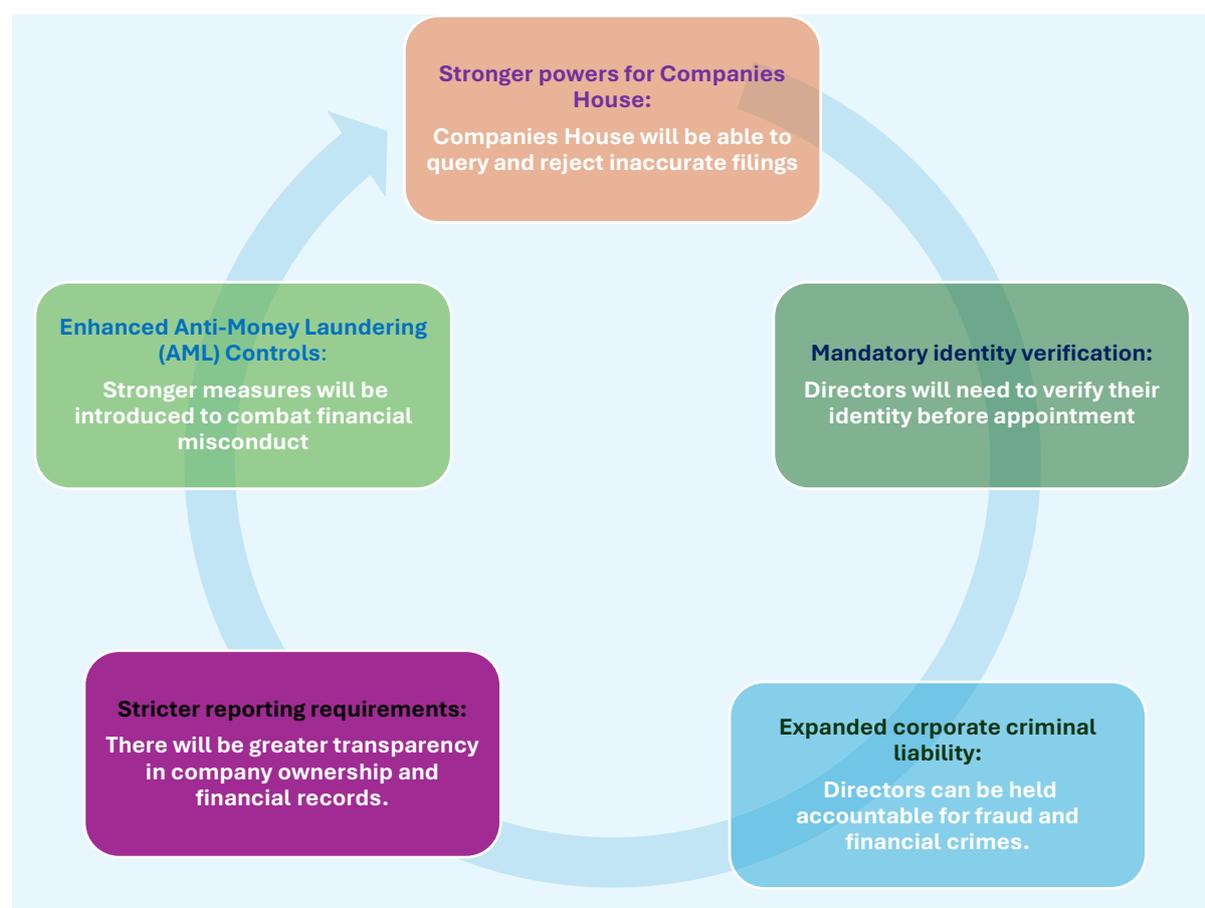
Shareholders or the company itself may take civil action against directors for breaches of duty.

Economic Crime and Corporate Transparency Act 2023 (ECCTA 2023)

The [ECCTA 2023](#) was introduced as part of the UK government's broader strategy to combat fraud, money laundering, and financial crime while enhancing corporate transparency.

Following a series of high-profile financial scandals and concerns over illicit finance, particularly in the wake of the Russian invasion of Ukraine, the Act aims to **strengthen regulatory oversight, increase corporate accountability, and improve law enforcement powers.**

Key changes



The impact of ECCTA 2023 on directors

Greater accountability: Directors must comply with new verification and transparency rules.

Increased personal liability: Non-compliance can lead to fines, disqualification, or prosecution.

Stronger governance obligations: Directors must prevent fraud and ensure financial integrity.

The new rules in ECCTA will be introduced in a phased approach. More information on what will be introduced and when can be found on [gov.uk](https://www.gov.uk)



Conclusion

Directors must understand their legal duties and the consequences of breaching them.

The ECCTA 2023 introduces new responsibilities that directors must be aware of.

Further links can be found below so you can learn more about your duties and responsibilities as a company director.

Leadership is not about being in charge. It is about taking care of those in your charge." – Simon Sinek

Further Resources

Directors' responsibilities

UK Government: Company directors and their responsibilities

– <https://www.gov.uk/running-a-limited-company>

Chartered Governance Institute – directors' duties guidance and factsheets - <https://www.cgi.org.uk/resources/information-library/factsheets/factsheets/what-is-a-director/>

The Companies Act 2006 – Full Legal Text

- <https://www.legislation.gov.uk/ukpga/2006/46/contents>

Institute of Directors – factsheets on directors' duties and corporate governance – <https://www.iod.com/resources/>

ICAEW – Understanding directors' duties

– <https://www.icaew.com/technical/corporate-governance>

Accounting responsibilities

UK Government – Filing Accounts – <https://www.gov.uk/annual-accounts>

UK Government – Financial responsibilities of directors

– <https://www.gov.uk/government/publications/life-of-a-company-annual-requirements>

Director disqualification

UK Government – Directors' disqualification – <https://www.gov.uk/company-director-disqualification>

ECCTA 2023

UK Government – Overview of ECCTA 2023 –

<https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-act-2023-factsheets>

Law firm analysis – How ECCTA affects directors

– <https://www.taylorwessing.com/de/insights-and-events/insights/2025/04/new-directors-obligations-and-liabilities>

[ECCTA: UK corporate governance changes in force and on the horizon](https://www.aoshearman.com/en/insights/economic-crime-and-corporate-transparency-act-2023-where-are-we-and-whats-next)

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