

The continuing obligations of a director



Although a director can exercise their right to resign whenever they choose, even if it is damaging to the company (subject to any express obligations, for example, under the Company's Articles or in a contract of employment), it is important to remember that certain statutory fiduciary duties continue after resignation, including:

- the duty to avoid conflicts of interest in respect of the exploitation of any property, information or opportunity that an ex-director became aware of at a time when they were a director; and
- the duty not to accept benefits from third parties for things done or omitted by the director before they ceased to be a director.

It has also recently been clarified by the Court that a director's duties will continue even where a company enters into administration, or insolvency, although in these circumstances a director's duty will be to the interests of the creditors of the company as a whole (and not only the company's interests).

Considerations for an ex-director

The law is strict in determining the liability of former directors for breaches of duty and ex-directors should consider the following key questions if they wish to pursue opportunities following resignation and/or the appointment of an insolvency practitioner to the company:

1. What exactly is the property, information, or opportunity the director is intending to pursue? Does it belong to the company?
2. Did the director become aware of the property, information, or opportunity as a result of their previous

position at the company?

3. Has the company or, if relevant, its creditors, agreed to you exploiting the property, information, or opportunity despite it belonging to the company?

Ex-directors, when faced with these question, often genuinely believe they are doing nothing wrong in pursuing property, information, and/or opportunities of a company that they were previously a director of, typically because the company cannot use the property, information, and/or opportunities for itself (whether as a result of insolvency or otherwise). This is not, however, a legitimate defence to a breach of the duty to avoid conflicts of interest, although other defences may be available.

When will an ex-director's duty end?

There is no express time limit to the ongoing duties owed by ex-directors, however, an ex-director may be able to establish, for example, that the opportunity they want to exploit has 'matured' for the company (i.e. it was considered and discarded by the company) and no longer belongs to it.

It is important to note there is also no limitation period for bringing a claim against an ex-director for breach his fiduciary duties, although a company may be prevented from succeeding in a claim for breach of duty if it has waited a long time to bring that claim to the detriment of the ex-director.

What to do if you suspect wrongdoing

A former director's liability for breach will often turn on the specific facts relating to the dealing of the property, information, and/or opportunity that is the subject of a company's (or its shareholders, office-holders, or creditors) claims.

How we can help

If you suspect there may be a potential claim against an ex-director, whether that ex-director is you or an office holder of a company you are involved with, please contact the [commercial disputes](#) team.



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