

What re the Duties and Roles of a Company Director in Tanzania

In Tanzania, all companies are governed and regulated under *The Companies Act No 12 of 2002*. *The Companies Act* provides for different types of companies or entities that are formed for various purposes, commercial or non commercial. The Act further provides for regulations and control of an entity through its officers, who have different duties and obligations as specified through company law. The law regulates the acts of the company stakeholders to include the shareholders, the directors, and the secretary and other officers who are involved in the day to day duties of the company.

For the purpose of management and control, company stakeholders can be divided into three groups or levels which include members, directors and employees. Members are those who have invested and have equity interest in the company. Directors are those who are appointed in accordance with *The Companies Act* for the day to day running of the companies. Finally, employees, some of whom are officers in management positions in the company. These persons through whom the company operates and executes its objectives are directly or indirectly vested with various duties and obligations for the business affairs of the company within *The Companies Act*.

The provisions for control and regulation of the company are provided by two main instruments which are *The Companies Act* and its individual constitution. The later regulates internal business affairs and how the company members relate and make decisions for the company affairs. The constitution of any company is legally called *The Memorandum and Articles of Association*. The Memorandum stipulates company objectives while the Articles of Association provide for the regulation of company members and directors.

Every decision made in the company has to conform and comply with the Memorandum and Articles of Association, and *the Companies Act*. Transparency, involvement and accountability are the main pillars of the decision making in *The Companies Act* for every decision made has to carry the company's business interest. The decision making

body for a company's daily operations consists mainly of directors and the company secretary, who pass various decision through resolutions. *The Companies Act* has provided duties for directors in any company which include the following.

I. **Duty to act in good faith and best interest of the company**

The Companies Act vests directors with powers when acting for the company. However, they should act honestly and in good faith in the best interest of the company, as provided under section 182 of *The Companies Act*.

II. **Regards to interest of employees**

As stated earlier in the overview of the company's affairs, employees are the most important integral part of the company. Therefore, directors are required, under section 183 of *The Companies Act*, to have regard for the interest of employees when acting in their daily affairs and decision making. In performing their duties, a director is to look after the interest of employees. Like any other fiduciary duty owed to the company by its directors, this duty to consider the interest of employees is an enforceable duty.

III. **Duty to exercise powers for proper purposes**

The powers that are vested in directors under *The Companies Act* are statutorily applied for a proper purpose. Section 184 of *The Companies Act* requires directors to apply their powers not for the benefit of what they believe to be in the best interest of the company, but rather the proper purpose of the company. This section requires directors to exercise powers for the particular purpose for which such powers were given to them, and not for collateral purposes.

IV. **Duty of care, skill and diligence**

Section 185 of *The Companies Act* brings accountability to directors to act with great care, skill and diligence when implementing their statutory duties. They are expected to make decisions in relation to this duty and not otherwise. The liability of negligence of directors may lead them to be liable civilly

and possibly criminally, depending on the circumstances of their acts or omissions in relation to the company's business. A higher level of knowledge in the company's affairs is expected of a director as a reasonable and responsible person. What is reasonable to a director when acting for the best interest of the company is what would be prudent to a reasonable and responsible person in like circumstances where a decision is being made.

The duty of a director is linked with his or her experience, skill and diligence, according to the meaning of *The Companies Act*. *The Companies Act* further stipulates the requirements of age for directors as a duty under section 195 of the Act. It is unclear whether section 195 of this law implies that experience, knowledge and skill come as a result of a director's age, though this may be argued from different perspectives. This section requires a director to be a person who has attained an age of 21 years prior to his or her appointment, and 70 years of age for retirement. It is therefore mandatory for a notice to be included in the Articles of Association regarding the company's requirement for age of directors.

V. **Duty to avoid conflict of interest**

In *The Companies Act*, this duty is stipulated under section 209, which compels directors to avoid placing themselves in positions in which their duties to the company will conflict with their personal interest. A director, for instance, may not, without disclosing in a meeting of directors, transact a contract in which he or she might have a direct or indirect interest. The duty of conflict of interest extends to any circumstance in which directors might be rewarded with benefits or opportunities that arise as a result of the good will of the company, or the company's information, without consent of the shareholders and directors of the company. The blue print line in *The Companies Act* as to when a director is considered to have drawn benefits of the company and triggered conflict of interest is when lack of disclosure to the Board of Directors becomes apparent. In this case, a fiduciary duty to the company is said to have been breached by the director.

Further, under *The Companies Act*, Tanzania uses common law principles on corporate governance, some of which are drawn to include the *duty to act within their powers*. According to the common law, directors will not exceed the distinct fiduciary duty conferred unto them. When such duty is exceeded, a director is said to have acted *ultra vires*, meaning he or she has acted beyond the conferred powers. In this scenario, a director has acted without authorization. It is illegal to enter into a contract on behalf of the company without conferred powers.

A director is further duty bound to act with independent judgment. In exercising powers and deciding what is best for the company, directors must use independent judgment without submitting themselves to the instructions of any other person. Violation of this may lead directors to be liable in their own cause.

It can be conclusively said that director's duties are statutory and professional, carrying with them a civil and/or criminal liability when they are not carried out professionally and within the applicable articles of association and laws of a particular jurisdiction. It is, therefore, mandatory to consider the prerequisite requirements of director's qualifications before appointment. Directors are appointed based on *The Companies Act*, and their professional qualifications, experience, skill and knowledge. The director's appointment is a professional duty under the provisions of the Companies Act and the principles of corporate governance, regulation and control, hence should not be taken as an ordinary position. Corporate governance impacts all issues of legal compliance. It is mandatory for all transactions and daily operations of the company to conform to the relevant statutory requirements under company law. Thus, the activities of the company are executed by directors for and on behalf of the company.

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