

March 2018

DIRECTORS - ACTING IN THE COMPANY'S BEST INTEREST

The Companies Act 71 of 2008 (the "**Act**") require directors of a company:

- to act in good faith and for a proper purpose;
- in the best interest of the company;
- and with a degree of care skill and diligence

as may reasonably be expected from a director with fiduciary duties to the company. Directors, as fiduciaries of the company, which they serve, must avoid at all times to place themselves in a situation where their duties towards the company come to be in conflict with their personal interests.

The **Act** further states that a director should disclose any personal financial interest in a matter / transaction in advance to the company's board. Said director is not only required to disclose its personal financial interest but also to withdraw from the meeting where the said transaction is discussed and decided upon.

This obligation imposed by the **Act** includes alternate directors, prescribed officers and members of board committees. However, it does not apply to a director that is the sole director and sole shareholder of a company.

A director is also obliged to disclose the personal financial interest of a "related person", which includes a director's spouse, partner or person separated by no more than two degrees of consanguinity as well as a juristic entity of which a director has direct / indirect controlling interest. Should a director / "related person" to such director acquire a personal financial interest, subsequent to the transaction being approved by the board, such director is still obligated to disclose the conflict, in which event the board's decision can be ratified by an ordinary shareholder's resolution being passed.

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